

United States
Circuit Court of Appeals
For the Ninth Circuit.

CITY OF KETCHIKAN, a Municipal Corporation,
Appellant,

VS.

MARY M. FURNIVALL,
Appellee.

Transcript of Record.

Upon Appeal from the United States District Court
for the District of Alaska, Division No. 1.

FILED

SEP 5 - 1923

R. D. MORGENTHAU,
CLERK.

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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in italic; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in italic the two words between which the omission seems to occur.]

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Names and Addresses of Attorneys of Record.

A. H. ZIEGLER, Esq., Ketchikan, Alaska, and

R. E. ROBERTSON, Esq., Juneau, Alaska,

Attorneys for Appellant.

WICKERSHAM & KEHOE, Juneau, Alaska,

Attorneys for Appellee.

In the District Court for the Territory of Alaska,
Division Number One, at Ketchikan, Alaska.

Filed in the District Court, District of Alaska.
May 20, 1922. Jno. H. Dunn. By A. W. Fox,
Deputy.

MARY A. FURNIVALL,

Objector,

vs.

CITY OF KETCHIKAN, a Municipal Corporation,
Defendant.

Objection.

To the Honorable Thos. M. Reed, District Judge:

Comes now Mary A. Furnivall, and for her objection to the application of the City of Ketchikan to have this Court make an order of adjustment and sale of her property mentioned and described in the Delinquent Tax Roll, which is set for hearing before this Court on May 20, 1922, says:

I.

That at all times mentioned in this objection and in the said Delinquent Tax Roll, this objector was

and now is the owner of a possessory right in and possession of those certain unpatented lands mentioned in said Delinquent Tax Roll and therein described under the head of Delinquent Improvement Assessments, as follows: the paramount title thereto belonging to and being in the United States:

HARRIS STREET EXTENSION.

Furnivall, F. J. 92.68 feet (Lot 11, Block E, S. Addn.) Jan. 1, 1922. \$353.10. \$11.06. \$364.16.

Furnivall, F. J. 79.79 feet (Lots 1 & 3, S. Addn.) Jan. 1, 1922. \$304.00. \$9.53. \$313.53.

That the said F. J. Furnivall was not at any of the times mentioned herein, or in said Delinquent Tax Roll, or in the proceedings before the City Council of Ketchikan, in relation to the improvement of said Harris Street Extension, the owner of said tracts of land, or any part thereof, nor had he any interest therein, except the said F. J. Furnivall was at all times and now is the husband [1*] of said Mary A. Furnivall.

II.

That at all the times mentioned in this objection and in the said Delinquent Tax Roll, and in the proceedings before its City Council in relation to the extension of the said Harris Street upon which the claim of tax herein is made by said City of Ketchikan against the said property, the City of Ketchikan was an incorporated town or city, within the Territory of Alaska, and this objector was the owner of said tracts of land therein, which said

*Page-number appearing at foot of page of original certified Transcript of Record.

tract of lands were now and are abutting upon the street therein known herein and in said proceedings as Harris Street Extension.

III.

That on September 7, 1920, certain property owners and others, residents of Ketchikan, presented to the City Council of Ketchikan, aforesaid, a petition in writing asking for the construction of an extension of the said Harris Street, at the expense of the property owners thereon, and the City of Ketchikan; that a full, true and correct copy of the said petition is attached to this objection, and marked Exhibit "A" and made a part of this objection.

IV.

That on October 5, 1920, certain property owners and others, residents of Ketchikan, presented to the City Council of Ketchikan, aforesaid, a petition in writing asking for the construction of an extension of the said Harris Street at the expense of the property owners thereon, and the City of Ketchikan; that a full, true and correct copy of the said petition is attached to this objection and marked Exhibit "B," and made a part hereof; that the last mentioned petition was ordered approved and filed October 5, 1920, by the said City Council of [2] of said City of Ketchikan, and the same was so approved and filed in its records.

V.

That at a regular meeting of the said City Council of Ketchikan, held in the council rooms of said Council, in said Ketchikan, on the second day of

February, 1921, the said City Council took the following action and thereby adopted the following resolution, to wit:

“Ketchikan, Alaska, February 2, 1921.

A regular meeting of the City Council of the City of Ketchikan was held on the above date. Present were Mayor D. W. Hunt, Councilmen John A. Anderson, Geo. Morrison, Wm. Anderson, G. E. Paup, Ed. J. Williams, and H. Nixon. The minutes of the previous meeting were read and approved.”

* * * * *

(Sundry proceedings and then the following):

“A motion was duly and regularly made and carried that the following Resolution be adopted and the same was adopted on call vote of Council as follows: Councilmen: John A. Anderson, Geo. Morrison, Wm. Anderson, G. E. Paup, Ed. J. Williams and H. Nixon all voting Aye and the Mayor declared the same adopted.

RESOLUTION.

Be it resolved by the Common Council of the City of Ketchikan, Alaska:

That the several sums set after the names of certain persons and the real property owned or occupied by them under possessory rights or otherwise which property abuts on the Harris Street Extension in the City of Ketchikan, Alaska, be and the said sums are hereby assessed against said persons and said land owned or occupied by them as aforesaid for two-thirds ($\frac{2}{3}$) of the expense of the construction of said street, the numbers of feet of prop-

erty abutting upon said improvement is hereinafter more fully set forth.

M. H. Smith, Jr.,.....	57	Ft. Frontage	\$221.27
Mrs. Orin Hill,.....	51	“ “	197.98
C. V. Trill,.....	113	“ “	438.67
C. A. Smith,.....	96	“ “	372.67
F. J. Furnivall,.....	58	“ “	225.16
J. Peterson,.....	68	“ “	263.98
F. J. Furnivall,....	78	“ “	302.80
Ed. Horton,.....	32	“ “	124.22
P. Ziller,.....	45	“ “	174.66
John Koel,.....	70	“ “	271.74
Dr. B. P. Dickinson,...	102	“ “	395.96
Wm. Boos,.....	41	“ “	159.16
R. E. McGlashan,.....	36	“ “	139.75
Mrs. G. C. Clark,.....	13	“ “	50.47

Be it further resolved: That the foregoing sums as assessed against said persons and said lands abutting thereon as above [3] *wet* forth be and the same are hereby made a specific lien upon said land; and such assessments shall be due and payable to the City Treasurer of the City of Ketchikan within ten (10) days from the date hereof, and shall bear interest thereafter at the rate of eight (8) per cent per annum and that if the same shall not be paid within thirty (30) days after the date hereof for failure to pay such assessments a penalty of fifteen (15) per cent of such assessment shall be *be* imposed and the whole sum of assessment and penalty shall thereafter bear interest at the rate of eight (8) per cent per annum until paid, which penalty and interest shall also be a lien upon the

property as hereinafter described and abutting on said improvement. And the collection of such assessments and the penalty and interest may be enforced by suit or collected in the same manner as other delinquent taxes.

Adopted and approved this 2d day of February, 1921.

GEO. MORRISON,

Mayor *pro tem.*

Attest:

WILL H. WINSTON,

City Clerk.

A motion was thereupon duly and regularly made and carried that the meeting adjourn.

GEO. MORRISON,

Mayor *pro tem.*''

Attest:

WILL H. WINSTON,

City Clerk.

(The foregoing record and resolution on pages 12-14 of the Minutes of the meeting of the City Council of Ketchikan, Alaska.)

VI.

That after the adoption of the resolution set out in paragraph V aforesaid, and on October 20, 1920, the city of Ketchikan entered into a contract with one Houck for the construction of a street of a narrow width along what is known as Harris Street Extension, in said Ketchikan, and between said October 20, 1920, and January 12, 1921, the said Houck constructed the said street under the said contract, and was paid by the City of Ketchikan

therefor in the full sum of \$4,958.80, the last payment thereon being on said January 12, 1921.

VII.

That immediately after the adoption of the said resolution by said City Council on said February 2, 1921, the objector herein, Mary A. Furnivall, and other owners of property abutting on the said Harris Street Extension, and on March [4] 2, 1921, made, signed and filed with the City Council of said City of Ketchikan, a protest in writing against the assessment so levied in said resolution of February 2, 1921, a full, true and correct copy of which is as follows:

“Ketchikan, 3/2/21.

The Mayor and Common Council of Ketchikan:

We, the undersigned occupiers and residents abutting what is locally known as “Shoenbar Tram,” protest against the assessment levied Feby. 2, '21, for street improvements for several reasons, amongst which are the following, viz.:

1st. That all the abutting owners have not been assessed.

2d. That the petition under which the work was carried out had not the support of sufficient interest.

(Signed) J. M. PETERSON,
R. E. McGLASHEN,
H. A. HOGEVIG,
W. P. BOOS,
MARY A. FURNIVALL,
BEATRICE P. DICKINSON.”

That said protest was laid on the table by the said City Council at its regular meeting on said March 2, 1921, and the objection of said signers treated for naught.

VIII.

That no petition or request or other authority had ever at any time or place been presented to the said City Council of Ketchikan, aforesaid, signed or endorsed by a majority of the property owners on or along so much of said Harris Street Extension as was by said City of Ketchikan so improved by the construction of a street thereon, prior to or since the beginning or completion of said improvement, or at all, and that all the persons together so signing said or any other petition or petitions asking for the construction of said improvement did not contain the names of a majority of the said property owners on both sides of said street so improved, either in front footage or in value, and the action of said City Council in so contracting to do said improvement by said Houck contract was wholly gratuitous, and not sufficient in law or in equity to create any lien upon the property of this objector, Mary A. Furnivall; that this objector did not sign [5] any of said petitions, or any petition, or otherwise request the said City Council, or the City of Ketchikan, or any of its officials, or the said contractor Houck, to do said work, or agree to pay for the same or any part thereof, but protested against the same as aforesaid.

IX.

That the Ketchikan Consolidated Mines Company,

a corporation organized under the laws of the State of Maine, was at all the times heretofore mentioned herein the owners of a tract of land abutting upon and along the south side of Harris Street Extension and upon the said street and improvement so constructed thereon as herein fully described by the said City of Ketchikan and its frontage on said improvements was equal to about one-half the whole length on said south side of said improvement; that its said property so abutted on and along said south side of the said south side of said Harris Street Extension said one-half the whole distance and its proportion of the whole cost was equal to about one-quarter of the whole; but that the City Council of Ketchikan as aforesaid did not in the resolution aforesaid so made and adopted by it on said February 2, 1921, or at any time or at all, by any resolution or any other proceeding, assess any part of the cost of said improvement of said Harris Street Extension, aforesaid, upon or charge the property of the said Mines Company, on and along the south side of said Harris Street Extension, with any part of the cost of said improvement thereon, but wrongfully and without authority or law assessed the whole of the cost of said improvement upon the property and tracts of land belonging to this objector and the other owners of property abutting upon the north side of said Harris Street Extension, thus charging the [6] property of this objector and other owners upon said north side of said improvement with the

assessment of the said Mines Company, to the injury of this objector.

X.

That thereafter and seeking further to injure this objector and other property owners on the north side of said Harris Street Extension, the City Council of Ketchikan, aforesaid, agreed with the said Mines Company to accept a deed from said Mines Company of a narrow strip of land along the south side of said Harris Street Extension, and thereby make the City of Ketchikan the owner thereof, thinking thereby to relieve the said Mines Company from any obligation to pay its proportion of said street assessment on said Harris Street Extension, and on the 30th day of November, 1921, the said Mines Company, made, signed and delivered to the said City of Ketchikan a deed of dedication of said strip of land for the purpose of a public road, and being a mere widening of said Harris Street, along the length of said extension and improvement, a copy of which deed is hereto attached and made a part of this objection; that said strip of land was of no value, and the deed thereto was a fraud upon this objector, and so made to cure the supposed defect in the wrongful assessment as aforesaid; that a copy of said deed is hereto attached, marked Exhibit "C."

XI.

That after the making and recording of said deed from said Mines Company to the City of Ketchikan on said November 3, 1921, and at a regular meeting of the City Council of Ketchikan, aforesaid, on Jan-

uary 4, 1922, the City Council accepted said deed from said Mines Company, and ordered it to be recorded by the City Clerk, which was done according to order.

XII.

That after receiving from the said Mines Company the said deed [7] of November 3, 1921, and on December 21, 1921, the City Council of Ketchikan, aforesaid, with the purpose of injuring the property owners so abutting on said Harris Street Extension, on and in front of said improvement, and immediately across said street north of said strip of land so deeded to the City of Ketchikan by said Mines Company, by its deed of November 3, 1921, repealed and set aside its resolution, as aforesaid, so made by it on February 2, 1921, and adopted a new and a different resolution in the following words and figures, to wit:

“Ketchikan, Alaska, December 21, 1921.

A regular meeting of the Common Council of the City of Ketchikan was held on the above date at 7:00 P. M. Present were Mayor Thomas Torry, Councilmen: John A. Anderson, Geo. Morrison, Axel Osberg, Walter Thomas, Thomas Davies, and W. A. Bryant. The minutes of the previous meeting were read and approved.”

* * * * *

“A motion was duly and regularly made and carried that a new resolution amending the former resolution making assessments on Harris Street be drafted and the City Clerk give the delinquents notice in writing that unless their assessments are

paid within 10 days suit will be instituted in the District Court and the City Clerk was instructed to bring said action.

Thereupon the following resolution was read:

RESOLUTION.

Be it Resolved by the Common Council of the City of Ketchikan, Alaska; That, Whereas a *recjeck* has been made of assessments levied against the property owners fronting on Harris Street in said city, and whereas such recheck has been made in accordance with established property lines fronting on said street; it is therefore hereby Resolved by the Common Council that the Resolution heretofore made on the 2d day of February, 1921, be and the same is hereby repealed and set aside, said resolution levying assessments against the property owners and property abutting on Harris Street.

And it is hereby Resolved:

That the several sums set after the names of certain persons and the real property owner or occupied by them under possessory rights or otherwise, which property abuts on the Harris Street Extension in the City of Ketchikan, Alaska, be and the said sums are hereby assessed against said persons and said land owned or occupied by them as aforesaid, for two-thirds ($\frac{2}{3}$) of the expense of the construction of said street, the number of front feet of property abutting upon said improvement is hereinafter more fully set forth. [8]

M. H. Smith, Jr.,....	47.73	Ft. Frontage	\$181.90
Mrs. O. F. Hill,.....	50.	“ “	190.50
C. V. Trill,.....	113.18	“ “	431.20
C. A. Smith,.....	87.	“ “	331.50
F. J. Furnivall,.....	92.68	“ “	353.10
J. M. Peterson,.....	34.	“ “	129.50
F. J. Furnivall,.....	42.	“ “	160.00
F. J. Furnivall,.....	37.79	“ “	144.00
Ed. Horton,.....	34.05	“ “	129.70
P. M. Ziller,.....	61.90	“ “	235.80
John Koel,.....	25.	“ “	95.20
John Koel,.....	51.08	“ “	194.60
Dr. B. P. Dickinson,..	93.34	“ “	355.60
Wm. Boos,.....	41.	“ “	156.20
R. E. McGlashen,....	34.97	“ “	133.20
Mrs. G. C. Clark,....	21.51	“ “	82.00

(H. J. Hagevig.)

Be it further Resolved: That the foregoing sums so assessed against said persons and said land abutting thereon as above set forth be and the same are hereby made a specific lien upon said land; and such assessments shall become due and payable to the City Treasurer of the City of Ketchikan immediately upon the adoption and approval hereof and from and after January 1, 1922, the same shall bear interest at the rate of 8% per annum; said interest shall be a lien on said property abutting on said improvement. And the collection of such assessments may be enforced by suit or collected in the same manner as other delinquent taxes.

It is further resolved that all payments made on

the former assessment-roll shall be applied towards the payment of the above assessments.

Adopted and approved this 21st day of December, 1921.

THOMAS THORRY,
Mayor.

Attest:

WILL H. WINSTON,
City Clerk.

Upon a third reading thereof the same was adopted and was approved by the Mayor as witnessed by his signature above set forth and the vote of the Council upon the same was by call vote as follows:

Councilmen: John A. Anderson, Aye. Walter Thomas, Aye. Geo. Morrison, Aye. Thomas Davies, Aye. Axel Osberg, Aye. W. A. Bryant, Aye.

* * * * *

A motion was duly and regularly made and carried that the meeting adjourn.

THOMAS TORRY,
Mayor."

Attest:

WILL H. WINSTON,
City Clerk.

(Copies from pages 45, 46, Minutes of the Meetings of the Common Council of Ketchikan, Alaska.)

XIII.

That subsequent to adopting the said Resolution of December 21, 1921, the said City of Ketchikan caused its officials to prepare and present to this Court, and file herein for such action as [9] the

Court may take, that certain document marked "Notice of Delinquent Taxes, Sewer and Street Improvements. Assessments on Real Property in the City of Ketchikan," a copy of which is printed in the "Ketchikan Chronicle" by said City of Ketchikan, is hereto attached and marked Exhibit "—" and made a part hereof; that by reason of its action in that regard the said City of Ketchikan has thereby created a cloud upon this objector's title to the said tracts of land therein described as belonging to said F. J. Furnivall, but which belong instead to this objector at all times herein mentioned, and now, to her great damage.

XIV.

That objector says that all of said assessments and proceedings of the said city of Ketchikan, and its said officials, in attempting to create a lien upon said land belonging to this objector for the recovery by it of the sums so claimed by it against this objector are void, and in violation of law.

XV.

That at all the times in this objection mentioned and now the said tracts of land upon which the delinquent assessments are claimed by the City of Ketchikan from this objector and which tracts were at all such times owned and possessed by this objector, were and now are unpatented lands, the paramount title to which was in the United States, but the equitable and possessory title was and is in this objector, and that at all such times this objector had and owned upon each said tract

houses or other improvements which were and are so owned by her, and she was at all such times and now is in peaceable, undisturbed and quiet possession and the owner thereof as against all other persons.

WHEREFORE, objector prays this Court to grant an order in her [10] favor that said delinquent tax assessment so claimed by the City of Ketchikan thereby be held void and of no effect, and that such proceeding be dismissed in favor of this objector and that the lien so claimed by said City of Ketchikan against this objector's said property be declared void and held for naught, and that objector have her costs in this case against said City of Ketchikan, and such other and further relief as objector is entitled to receive.

JAMES WICKERSHAM,

Attorney for Objector, Mary A. Furnivall.

Territory of Alaska,

City of Ketchikan,—ss.

James Wickersham, being first duly sworn, deposes and says that he is the attorney for the objector, Mary A. Furnivall, hereinbefore mentioned; that he has read the foregoing objections, knows the contents thereof, and believes the facts stated therein to be true; that this verification is made by this affiant because the said Mary A. Furnivall is not within the Territory of Alaska, and cannot therefore verify the same.

JAMES WICKERSHAM.

Subscribed and sworn to before me this 20th day of May, 1922.

[Notarial Seal]

A. H. ZIEGLER,

Notary Public in and for Alaska.

My Commission expires July 15, 1925. [11]

Exhibit "A."

Ketchikan, Alaska, Sept. 7, 1920.

To the Common Council,

Ketchikan, Alaska.

We, the undersigned, property owners along the Right of Way and public thoroughfare following the course of and upon which is located the tramway belonging to the Ketchikan Consolidated Mines Company and locally known as the Schoenbar Tram, do herewith respectively petition your honorable body to proceed at the earliest opportunity to erect, construct and maintain a temporary street for vehicle passage; said street to be 18 feet in width with a four foot sidewalk. We herewith agree to pay our respective *pro rata* of the expense of same.

Mrs. O. F. HILL.

C. A. SMITH.

ED. M. HORTON.

M. H. SMITH, Jr.

C. V. TRILL.

R. A. BARTHOLOMEW.

M. H. SMITH, Sr.

WM. P. BOOS,

By Mrs. WM. P. BOOS.

J. M. PETERSON.

JOHN KOEL. [12]

Exhibit "B."

To the Honorable Mayor and Common Council of
the City of Ketchikan, Alaska.

We, the undersigned, constituting more than two-thirds in value of the property of the property owners whose property abuts upon the proposed improvement, hereby petition your Honorable Body to construct a sixteen foot plank roadway and a four foot sidewalk and to lay out, establish and a forty foot right of way, from the present Harris Street, in front of the Parker house to and past the Harry Smith house, or to the city limits. And we hereby agree to pay to the City of Ketchikan our proportionate share of two-thirds ($\frac{2}{3}$) of the cost of such improvement, and that such sum be a specific lien upon our *respective property abutting on said improvement*.

Name.	Description of Property.	No.	ft.
-------	--------------------------	-----	-----

C. V. TRILL,

C. A. SMITH.

LOTTIE C. HILL.

M. H. SMITH, Jr.

JOHN KOEL.

Mrs. W. P. BOOS.

By Mrs. W. P. BOOS.

E. M. HORTON.

P. M. ZILLER, by

W. F. STIVEN,

Atty. in Fact.

Ordered approved and filed Oct. 5, 1920.

WILL H. WINSTON,

City Clerk. [13]

Exhibit "C."

THIS INDENTURE, made this 3d day of November, 1921, by and between the Ketchikan Consolidated Mines Co., a corporation, organized under the laws of the State of Maine, appearing by Chas. H. Cosgrove, its duly authorized attorney in fact, first party, and the City of Ketchikan, a municipal corporation of the Territory of Alaska, second party;

WITNESSETH: That in consideration of One (\$1.00) Dollar and other valuable considerations paid to said first party by said second party, receipt whereof is hereby acknowledged, said first party does herewith grant, convey and dedicate to said second party, for the purpose of a Public Road only, all of that certain strip of ground beginning at the southerly end of Harris Street, so called where the same enters the Florida Mining Claim, and continuing across said Florida Mining Claim with a width bounded by the westerly side of said street, as platted by Joseph Ulmer, C. E., on the one side and the middle of Ketchikan Creek on the easterly side.

IN WITNESS WHEREOF, the said first party has caused these presents to be executed by its attorney in fact this 3d day of November, 1921.

KETCHIKAN CONSOLIDATED MINES CO.

By CHAS. H. COSGROVE,

Attorney in Fact.

Witnesses:

WILL H. WINSTON.

J. A. CLARY.

United States of America,
Territory of Alaska,—ss.

This is to certify that on this 3d day of November, 1921, before the undersigned, a notary public for Alaska, duly commissioned and sworn, personally appeared Chas. H. Cosgrove, known to me to be the attorney in fact of the Ketchikan Consolidated Mines Co., and who acknowledged that he signed and sealed the foregoing instrument as the free act and deed of said Ketchikan Consolidated Mines Co., and he further acknowledged that he was fully authorized to execute the same.

[Notary's Seal] WILL H. WINSTON,
Notary Public in and for Alaska.

My commission expires June 16, 1925. [14]

Notice of Delinquent Taxes, Sewer and Street Improvement Assessments on Real Property in the City of Ketchikan.

To Whom It May Concern:

Notice is hereby given, that the delinquent tax-roll and delinquent sewer and street improvement assessments of real property for the City of Ketchikan, Alaska, for the years 1918, 1919, 1920, and 1921, has been completed and is now open for public inspection at the office of the City Clerk, and that the same will be presented to the District Court for the Territory of Alaska, Division No. 1, at Ketchikan on the 20th day of May, 1922, for adjustment and order of sale. The following list shows the tracts of land as shown by said delinquent roll, the amount of tax, assessments, penalty and interest thereon, and to whom assessed: [15]

DELINQUENT IMPROVEMENT ASSESSMENTS

Bawden Street Sewer				
Groelinger, A. J.	Lot 14-A, Block 13	Nov. 20, 1920	\$ 79.36	\$ 9.64 \$ 89.00
Petty, R. L.	Lots 16, & 17, Block 13	" "	186.32	22.40 208.72
Naslund, B. N.	Part Lot 1, Block 16	" "	112.67	13.56 126.23
Hendrickson, Arndt	Part Lot 2, Block 16	" "	112.67	13.56 126.23
Shelton, James	Part Lot 2, Block 16	" "	112.67	13.56 126.23
Wyckoff, J. M.	Lot Florida Mining Claim	" "	79.36	9.64 89.00
Harvey, Mrs. M.	Lot Florida Mining Claim	" "	79.36	9.64 89.00
Front Street Grading and Sewer				
Abercrombie, E.	Part Lot 57, Block 9	Jan. 29, 1921	180.73	27.11 229.70
Harris Street Extension				
Furnivall, F. J.	92.68 feet (Lot 11, Block E. S. Addn.)	Jan. 1, 1922	353.10	11.06 364.16
Furnivall, F. J.	79.79 feet (Lts 1&3, Blk 3, S. Addn.)	" "	304.00	9.53 313.53
Peterson, J.	34 feet (Lot 2, Blk 3 S. Addn.)	" "	129.50	4.07 133.57
Smith, C. A.	12 feet (Lot 4, Blk 3 S. Addn.)	" "	40.35	1.25 41.60
Horton, Ed.	34.05 feet (Lot 10, Blk E. S. Addn.)	" "	5.48	.10 5.58
Paving Intersection Dock and Main Streets				
Independent Or. R. M.	Lot 1, Block 21	Dec. 1, 1921	379.31	51.90 445.65
TOTAL.....			\$2154.88	\$79.01 \$154.31 \$2388.20
..	Total Real Taxes Delinquent.....			\$1786.11
	Total Improvement Assessments Delinquent.....			2388.20
TOTAL				\$4,174.31

I hereby certify that the above and foregoing is a true and correct roll of the delinquent taxes and delinquent street improvement assessments of the City of Ketchikan, upon real property for the years 1918, 1919, 1920, and 1921, and showing the date when said taxes, and street assessments became delinquent, and showing the total amount of such delinquent taxes and assessments, penalty and interest separately stated, and the aggregate of the whole thereof.

During the time of the publication of the foregoing notice, and up to the time of the order of sale by the Court, any person may appear and make payment to the City Treasurer on any piece or tract therein, together with the penalty and interest.

In Witness Whereof, I have hereunto set my hand and affixed the official seal of the City of Ketchikan this 17th day of February, 1922.

[Seal]

WILL H. WINSTON,

City Clerk.

Publish February 20, 27. March 6, 13, 20. [16]

In the District Court for the Territory of Alaska,
First Division, Ketchikan.

No. 537—KA.

In the Matter of THE KETCHIKAN TAX ROLL
vs.

MARY M. FURNIVALL,

Objector.

J. M. PETERSON,

Objector.

Demurrer.

Come now the above-named objectors and each of them, and demurs to the proceedings by the City of Ketchikan in the above-entitled matter, and for cause of demurrer says:

That said proceedings and the record thereof do not upon their face, or at all, state any facts sufficient to constitute any cause of action against the objectors or either of them, or sufficient to authorize this Court to declare a lien or the foreclosure thereof upon the, or any, property of objectors, or to render any judgment against them or either of them.

JAMES WICKERSHAM,
Attorney for Objectors.

Filed in the District Court, District of Alaska,
First Division. June 3, 1922. John H. Dunn,
Clerk. By W. B. King, Deputy. [17]

In the District Court for the Territory of Alaska,
Division No. 1, at Ketchikan.

No. 537—KA.

MARY A. FURNIVALL,

Objector,

vs.

CITY OF KETCHIKAN, a Municipal Corporation,
Defendant.

Answer to Objections.

Comes now the City of Ketchikan, a municipal corporation herein called the defendant and for answer to the objections of Mary A. Furnivall above named, admit, deny and allege as follows:

I.

Referring to the allegations contained in paragraph I of the objections, the said City of Ketchikan, the above-named defendant, denies each and all of the allegations therein contained and the whole thereof.

II.

Referring to the allegations contained in paragraph II, the said City of Ketchikan admits the allegation that during the times mentioned it was a municipal corporation, but denies each and every other allegation therein contained.

III.

Referring to the allegations contained in paragraphs III, IV, V, VI, VII, the said defendant admits the same.

IV.

Referring to the allegations contained in paragraph VIII, said defendant denies each and every allegation contained therein save and except all of the closing part of said paragraph commencing with the word "that" in the fifth line from the bottom. [18]

V.

Referring to the allegations contained in paragraphs IX, X, XI, and XIII, the said defendant

alleges that it does not appear upon the face of said paragraphs or any of them, that any allegation contained in said paragraphs or any of them, state facts sufficient to constitute grounds or any ground for objection by the said objector to this Court making an order of adjustment and sale of lands of which the objector claims ownership as set forth in paragraph I of the objection herein.

VI.

Referring to the allegations contained in paragraph XII, the said defendant admits the alleged proceedings of the City Council of Ketchikan aforesaid as set forth but denies each and every other allegation in said paragraph contained.

VII.

Referring to the allegations contained in paragraph XIV, the said defendant denies each and every allegation therein contained and avers that said allegations state a mere conclusion of law.

VIII.

Referring to the allegations contained in paragraph XV, the said defendant denies each and every allegation in said paragraph and the whole thereof.

WHEREFORE, the said City of Ketchikan herein called "defendant" prays judgment that the objectors aforesaid take nothing by reason of her statement of objectors filed herein, that the same be dismissed, and that the said defendant City of Ketchikan aforesaid recover of and from

the said objector Mary A. Furnivall its costs and disbursements in this proceeding.

JAMES M. SHOUP,

WILL H. WINSTON,

Attorneys for Defendant. [19]

United States of America,

Territory of Alaska,—ss.

Thomas Torry being first duly sworn on oath deposes and says: I am the duly elected, qualified and acting Mayor of the City of Ketchikan, a municipal corporation, defendant in the above entitled action or proceeding, that I have read the foregoing answer, know the contents thereof and believe the same to be true.

THOMAS TORRY.

Subscribed and sworn to before me this 26th day of May, 1922.

[Notarial Seal]

WILL H. WINSTON,

Notary Public for Alaska.

My Commission expires June 16, 1925.

Filed in the District Court, District of Alaska, First Division. May 27, 1922. Jno. H. Dunn, Clerk. By A. W. Fox, Deputy. [20]

In the District Court for the Territory of Alaska,
Division Number One at Ketchikan.

No. 537—KA.

In the Matter of the Delinquena Tax Roll for THE
CITY OF KETCHIKAN

vs.

MARY A. FURNIVALL,

Objector.

Judgment and Decree.

The issues in the above-entitled matter having been brought to trial before the Court without a jury, on the 3d day of June, 1922, at Ketchikan, Alaska, Mary A. Furnivall, objector, appeared by her attorney, James Wickersham, Esq., and the City of Ketchikan appearing by its attorneys, James M. Shoup, Esq., and Will H. Winston, Esq., and the Court having heard and considered the evidence presented and the arguments of counsel for both parties, and after due deliberation having made its decision in writing in favor of the objector and against the City of Ketchikan, with findings of fact and conclusions of law duly filed in this Court and cause

Now, it is hereby ORDERED, ADJUDGED and DECREED that the objectors of Mary A. Furnivall to the assessment of the costs of improvement of the Harris Street Extension in the City of Ketchikan, Alaska, against objector and against Lots 1 and 3 in Block 3, Townsite Addition, and Lot 3 in Block E, Schoenbar Addition, in the City of Ketchikan, be and they are hereby sustained, and that the order of sale of said property to satisfy said assessment requested herein by the City of Ketchikan be and the same is hereby denied, and it is

ORDERED that objector herein recover of the City of Ketchikan her costs and disbursements by her in this behalf expended, to be taxed by the Clerk of this Court.

Done at Juneau, Alaska, this 5th day of October, 1922.

THOS. M. REED,
District Judge. [21]

Copy of findings, conclusions of law and judgment and decree received Aug. 15, 1922.

JAMES M. SHOUP,
Of Counsel for Defendant.

Filed in the District Court District of Alaska, First Division. Oct. 5, 1922. John H. Dunn, Clerk. By W. B. King, Deputy.

Entered Court Journal No. D, page 284. [22]

In the District Court for the Territory of Alaska,
Division Number one at Ketchikan, Alaska.

No. 537—KA.

MARY M. FURNIVALL,

Objector,

vs.

CITY OF KETCHIKAN, a Municipal Corporation,
Defendant.

Motion to Strike.

Comes now Mary A. Furnivall, one of the objectors in the above-entitled action, and moves the Court to strike from the files in this cause the papers herein marked "objections of the defendant to the findings of fact and conclusions of law and decree" therefore entered by the objector, which papers were filed in this Court by defendant's counsel on Saturday, November 25, 1922, because

they were so filed herein in violation of the oral instructions of the Court, without any order of the Court, or service of copy or notice to objector or objector's attorney of record.

Also moves the Court to strike from the files herein certain papers marked "defendant's proposed findings of fact and conclusions of law" filed on Saturday, November, 25, 1922, because they were so filed herein in violation of the oral instructions of the Court, without any order of the Court, or service of copy or notice to objector or objector's attorney of record.

Dated at Ketchikan, Alaska, this 27th day of November, 1922.

WICKERSHAM & KEHOE.

JAMES WICKERSHAM,

Attorney for Objector.

Filed in the District Court District of Alaska, First Division. Nov. 28, 1922. John H. Dunn, Clerk. By W. B. King, Deputy. [23]

In the District Court for the Territory of Alaska,
Division Number one at Ketchikan, Alaska.

No. 537—KA.

MARY M. FURNIVALL,

Objector,

J. M. PETERSON,

Objector,

vs.

CITY OF KETCHIKAN, a Municipal Corporation,
Defendant.

Order on Motion to Strike.

This cause came on to be heard on the 2d day of December, 1922, on motion of the above-named objectors by their attorneys, Wickersham & Kehoe, to strike from the files in this Court and cause the exceptions heretofore filed by the City of Ketchikan to the findings of fact, conclusions of law and decree filed herein by and in favor of said objectors, on November 25, 1922, because they were so filed without an order of the Court, or service of a copy or notice to the above-named objectors or to their said attorneys of record, and the said motion is overruled, to which action of the Court the said objectors each except and their exception is by the Court allowed.

And the cause also came on to be heard on the said 2d day of December, 1922, on the motion of the above-named objectors by their attorneys, Wickersham & Kehoe, to strike from the files herein certain papers marked "Defendant's Proposed Findings of Fact and Conclusions of Law," because they were so filed herein in violation of the oral instructions of the Court, without any order of the Court, or without any service of copy or notice to the objectors herein or to their attorneys of record, and the Court having heard counsel for both objectors and the City of Ketchikan, the motion to strike is allowed and the said papers are now stricken from the files for reasons stated in said motion. [24]

Done in open Court this 5th day of December, 1922.

THOS. M. REED,
District Judge.

Service accepted Dec. 4, 1922. Will H. Winston,
Att'y for City of K ———.

Filed in the District Court, District of Alaska,
First Division, Dec. 5, 1922. John H. Dunn, Clerk.
By W. B. King, Deputy.

Entered Court Journal No. D, pages 309, 310.
[25]

In the District Court for the Territory of Alaska
Division Number One, at Ketchikan, Alaska.

No. 537—KA.

MARY M. FURNIVALL,

Objector,

J. M. PETERSON,

Objector,

vs.

CITY OF KETCHIKAN, a Municipal Corpora-
tion, Delinquent Tax Roll,

Defendant.

Order Re Bill of Exceptions.

This cause came on to be heard in the District
Court for the Territory of Alaska, First Division,
at Ketchikan, Alaska, on the 25th day of November,

1922, on the motion of Will H. Winston, attorney for the City of Ketchikan, supported by the affidavit of said Will H. Winston, both said motion and affidavit having been filed in this Court and cause on November 13, 1922, in which motion the City of Ketchikan moved to set aside the findings of fact, conclusions of law, and decree heretofore filed in this Court and cause by and in favor of Mary M. Furnivall and J. M. Peterson, objectors, on October 5, 1922, because service thereof and notice of such service was not made on the attorney for the City of Ketchikan; said motion was heard by this Court on said 25th day of November, upon supporting affidavit of Will H. Winston and the opposing affidavit of James Wickersham, filed in this Court and cause on November 24, 1922, and upon the argument of counsel and a consideration of the said affidavits, the motion to set aside the findings of fact and conclusions of law and decree heretofore filed by the said Mary M. Furnivall and J. M. Peterson in this cause and signed by the Judge therein, be and the same was then and there by the Court denied, but upon the said hearing the Court orally ordered that the City of Ketchikan have leave to file *nunc pro tunc* the exceptions [26] which it desires to preserve to the findings of fact, conclusions of law and the decree entered heretofore in this case by and in favor of the objectors, Mary M. Furnivall and J. M. Peterson, to which oral instructions at the time so made, the objectors, Mary M. Furnivall and J. M. Peterson

severally objected and excepted, and their several exceptions were by the Court heard and allowed.

Done in open court this 5th day of December, 1922.

THOS. M. REED,
District Judge.

Service accepted Dec. 4, 1922.

WILL H. WINSTON,
Att'y for City of Ketchikan.

Filed in the District Court, District of Alaska,
First Division. Dec. 5, 1922. John H. Dunn,
Clerk. By ———, Deputy. [27]

In the District Court for the Territory of Alaska,
Division Number One, at Ketchikan.

No. 537—KA.

MARY M. FURNIVALL and J. M. PETERSON,
Objectors,

vs.

CITY OF KETCHIKAN, a Municipal Corporation,
Defendant.

**Order Extending Time to and Including February
1, 1923, to File Bill of Exceptions.**

This matter coming on regularly for hearing and
it appearing to the Court that additional time is
required within which to settle the bill of excep-
tions herein filed by the City of Ketchikan,

Now, therefore, it is hereby ORDERED that the
above-named defendant be given until February 1,

1923, within which time to settle the bill of exceptions herein filed.

Done in open court this 23d day of December, 1922.

THOMAS M. REED,
Judge.

Filed in the District Court, District of Alaska, First Division. Dec. 23, 1922. John H. Dunn, Clerk. By W. B. King, Deputy.

Entered Court Journal No. 4, page 377.

In the District Court for the Territory of Alaska,
Division Number One, at Ketchikan.

No. 537—KA.

In the Matter of the Delinquent Tax Roll for
THE CITY OF KETCHIKAN, Alaska,
and the Application for an Order of Sale
Thereon.

No. 537—KA.

MARY M. FURNIVALL and J. M. PETERSON,
Objectors,

vs.

CITY OF KETCHIKAN, a Municipal Corporation,
Defendant.

**Order Extending Time to and Including March 20,
1923, to Settle Bill of Exceptions.**

This matter coming on to be tried on this fifth day of February, 1923, upon the application of the

City of Ketchikan [52] for an extension of time in which to settle the bill of exceptions herein, W. H. Winston, Esquire, appearing for the City and no appearance being made on behalf of the above-named objectors, the Court being fully advised in the premises, on motion of W. H. Winston, attorney for the City of Ketchikan, aforesaid,

IT IS ORDERED that the time in which to settle the bill of exceptions in the above-entitled matter be and the same is hereby extended to and including the twentieth day of March, 1923.

Done in Chambers, this 5th day of February, 1923.

THOS. M. REED,

Judge.

Filed in the District Court, District of Alaska, First Division. Feb. 5, 1923. John H. Dunn, Clerk. By M. D. Morrissey, Deputy.

(Same Title and Cause.)

Bill of Exceptions.

Be it remembered that on the third day of June, 1922, there came on for hearing the objections filed herein the 20th and 25th days of May, 1922, of the above-named Mary M. Furnivall and J. M. Peterson respectively to the application of the said City of Ketchikan for an adjustment and order of sale of certain property in the said City for delinquent

nonpayment of special street grade assessments for the Harris Street Extension, all as set forth in the Delinquent Tax Roll of said City of Ketchikan, duly filed herein on the 20th day of May, 1922, and as set forth in the said objections so filed as aforesaid.

The said objections of both said objectors was heard and determined at one and the same time, and the evidence and proceedings hereinafter enumerated was heard and had in the case of each of said objectors, to wit:

Said Delinquent Tax Roll so filed as aforesaid, was duly presented for adjustment and order of sale. Said roll was and is as follows: [53]

Notice of Delinquent Taxes, Sewer and Street Improvement Assessments on Real Property in the City of Ketchikan.

To Whom It May Concern

Notice is hereby given, that the delinquent tax-roll and delinquent sewer and street improvement assessments of real property for the City of Ketchikan, Alaska, for the years 1918, 1919, 1920, and 1921, has been completed and is now open for public inspection at the office of the City Clerk, and that the same will be presented to the District Court for the Territory of Alaska, Division No. 1, at Ketchikan on the 20th day of May, 1922, for adjustment and order of sale. The following list shows the tracts of land as shown by said delinquent roll, the amount of tax, assessments, penalty and interest thereon, and to whom assessed:

DELINQUENT IMPROVEMENT ASSESSMENTS

Bawden Street Sewer				
Groelinger, A. J.	Lot 14-A, Block 13	Nov. 20, 1920	\$ 79.36	\$ 9.64 \$ 89.00
Petty, R. L.	Lots 16, & 17, Block 13	" "	186.32	22.40 208.72
Naslund, B. N.	Part Lot 1, Block 16	" "	112.67	13.56 126.23
Hendrickson, Arndt	Part Lot 2, Block 16	" "	112.67	13.56 126.23
Shelton, James	Part Lot 2, Block 16	" "	112.67	13.56 126.23
Wyckoff, J. M.	Lot Florida Mining Claim	" "	79.36	9.64 89.00
Harvey, Mrs. M.	Lot Florida Mining Claim	" "	79.36	9.64 89.00
Front Street Grading and Sewer				
Abererombie, E.	Part Lot 57, Block 9	Jan. 29, 1921	180.73	27.11 229.70
Harris Street Extension				
Furnivall, F. J.	92.68 feet (Lot 11, Block E. S. Addn.)	Jan. 1, 1922	353.10	11.06 364.16
Furnivall, F. J.	79.79 feet (Lts 1&3, Blk 3, S. Addn.)	" "	304.00	9.53 313.53
Peterson, J.	34 feet (Lot 2, Blk 3 S. Addn.)	" "	129.50	4.07 133.57
Smith, C. A.	12 feet (Lot 4, Blk 3 S. Addn.)	" "	40.35	1.25 41.60
Paving Intersection Dock and Main Streets				
Independent Or. R. M.	Lot 1, Block 21	Dec. 1, 1921	379.31	51.90 445.65
TOTAL.....			\$2154.88	\$79.01 \$154.31 \$2388.20
Total Real Taxes Delinquent.....				\$1786.11
Total Improvement Assessments Delinquent.....				2388.20
TOTAL				\$4,174.31

I hereby certify that the above and foregoing is a true and correct roll of the delinquent taxes and delinquent street improvement assessments of the City of Ketchikan, upon real property for the years 1918, 1919, 1920, and 1921, and showing the date when said taxes, and street assessments became delinquent, and showing the total amount of such delinquent taxes and assessments, penalty and interest separately stated, and the aggregate of the whole thereof.

During the time of the publication of the foregoing notice, and up to the time of the order of sale by the court, any person may appear and make payment to the City Treasurer on any piece or tract therein, together with the penalty and interest.

In Witness Whereof, I have hereunto set my hand and affixed the official seal of the City of Ketchikan this 17th day of February, 1922.

[Seal]

WILL H. WINSTON,

City Clerk.

Publish February 20, 27. March 6, 13, 20. [54]

Affidavit of Publication.

District of Alaska,
Division Number 1,—ss.

Ray S. Steele, being duly sworn, says, That he is the principal clerk of the Ketchikan "Alaska Chronicle," a daily newspaper published at Ketchikan, in said Division and District, and that the publication annexed was published in said newspaper at least once a week and every week for four successive weeks, commencing on the 20th day of February, 1922, and ending on the 20th day of March, 1922.

RAY S. STEELE.

Subscribed and sworn to before me this seventh day of July, 1922.

WILL H. WINSTON,
Notary Public for Alaska.

Commission expires June 16, 1915.

Filed in the District Court, District of Alaska,
First Division. July 7, 1922. John F. Dunn, Clerk.
By M. D. Morrissey, Deputy.

(It was orally agreed between counsel that the notice of delinquent taxes, sewer and street improvements assessments on real property in the City of Ketchikan, need not be annexed to the foregoing affidavit; said notice having been already annexed to and made a part of the objections filed in the above-entitled case.) [55]

Saturday, June 3, 1922, 2 o'clock P. M.

Court met pursuant to adjournment.

Whereupon to sustain said objections, said objectors introduced the following evidence, and the following proceedings were had, viz.:

Testimony of Frank J. Furnivall, for Objectors.

FRANK J. FURNIVALL, one of the objectors herein, called as a witness on behalf of the objectors, having been first duly sworn to tell the truth, the whole truth and nothing but the truth, testified as follows:

Direct Examination.

(By JAMES WICKERSHAM.)

Q. You may state your name.

A. Frank J. Furnivall.

Q. Do you know Mary A. Furnivall? A. I do.

Q. What relation is she to you, if any?

A. My wife.

Q. How long have you and Mrs. Furnivall been married? A. Sixteen years this month.

Q. I call your attention to some tracts of land in the incorporated town of Ketchikan, shown on a map of Ketchikan townsite addition, United States survey No. 1381, and ask you to point out, if you can, what property there belongs to Mary A. Furnivall?

A. Lots one, two and three—two lots under an agreement of sale.

Q. To a man named Peterson? A. Yes.

The COURT.—That's lots one and three.

(Testimony of Frank J. Furnivall.)

Q. Lots one and three, then, belong to Mary A. Furnivall? A. Absolutely.

Q And lot two formerly belonged to Mary A. Furnivall?

A. Under an agreement of sale. [56]

Q. To whom? What is Mr. Peterson's name?

A. J. M. Peterson.

The COURT.—That is what is called the S. Addition?

The WITNESS.—Well, it's called on this map, your Honor, Ketchikan Townsite Addition, Alaska, U. S. Survey No. 1381, and the map further bears this statement: "I hereby certify that this plat of U. S. Survey No. 1381—" Strike that out. It's dated January 26, 1922. "I hereby certify that this plat of U. S. Survey No. 1381, Ketchikan Townsite Addition, Alaska, as surveyed under special instructions dated February 7, 1921, by Otis Ross, U. S. Cadastral engineer and E. D. Calvin, U. S. Surveyor, in accordance with the provisions of the act of March 3, 1891 (26 Stat. 1095), is strictly conformable to the field notes of the survey thereof on file in this office, which have been examined and approved. Karl Theile."

Mr. WICKERSHAM.—So that the matter may be before the Court, I offer this map in evidence.

The COURT.—Any objection?

Mr. WINSTON.—No objection.

The COURT.—It may be received and filed.

Mr. WICKERSHAM.—I ask to have it filed and marked.

(Testimony of Frank J. Furnivall.)

(Whereupon said plat was received in evidence and marked Objector's Exhibit No. 1.)

Q. Has Mrs. Furnivall another lot on that same street? A. Yes, sir.

Q. Do you know the number of that lot and what addition it's in?

A. That is near the Ketchikan Consolidated Mines Company property.

Q. I show you a map, now, marked "Plat of Schoenbar Addition [57] part of Florida Mining Claim, Ketchikan, Alaska," dated April 15, 1921, signed by Joseph Ulmer, C. E., and ask you if you can locate the other lot on that chart.

A. (After examining plat.) Yes, sir.

Q. What is the number? A. Lot 11.

Q. Lot 11 in block E?

A. Block E, I think it is; lot 11.

The COURT.—That is the Schoenbar Addition?

Mr. WICKERSHAM.—Yes; that's in the Schoenbar Addition. I'll point out to the Court directly the difference—

The COURT.—Very well.

Mr WICKERSHAM. (Continuing.)—in the description. They are not properly described at all.

Q. Do you know when Mrs. Furnivall secured title to those properties that you have described?

A. September 5, 1919.

Q. In what way?

A. That particular piece by a deed from myself.

Q. You mean, lot 11 in block E?

(Testimony of Frank J. Furnivall.)

A. Lot 11, block E.

Q. Schoenbar Addition?

A. Yes; and up to lot 3.

Q. On the same day? A. Yes.

Q. By a deed from you? A. Yes.

Mr. WICKERSHAM.—If counsel wishes to bring the record of the original deed in and read it into the record—

Mr. SHOUP.—We'll admit that it's recorded.
[58]

Mr. WICKERSHAM.—You admit that it is recorded. I'm not going to introduce this map of the Schoenbar Addition in evidence because I haven't got any other copy, and I had to borrow that from the city, from the surveyor, but I offer it to the Court for its inspection during the trial.

The COURT.—This must have been filed of record in the recorder's office?

Mr. WICKERSHAM.—I assume so. That will be admitted, won't it—that this map was recorded also?

Mr. SHOUP.—I don't know about that. I know the deed was.

Q. Do you know whether this plat is of record or not?

A. No, sir; it happened since I was away.

Q. You mean the one made by the Government?

A. This one happened since I was away.

Q. This one also.

Mr. WICKERSHAM.—Now, may it be admitted

(Testimony of Frank J. Furnivall.)

that there is a patent issued by the Government of the United States to the Florida Mining Claim?

Mr. SHOUP.—Yes; we'll admit that.

Mr. WICKERSHAM.—And will it be admitted that Ketchikan Creek is not a meandering stream, but a stream merely flowing across that claim?

Mr. SHOUP.—I don't know.

Mr. WICKERSHAM.—Well, then, we'll have to send for the record of patent.

The WITNESS.—No. 4610.

Q. 24610? A. No; 4610.

Q. In what book? A. Last book. [59]

Mr. WINSTON.—I can't see where it is material.

Q. Referring now to the Government map of the lands beyond the Florida claim, where lots 1, 2 and 3 are, I wish you would state if there is a patent for that ground?

Mr. WINSTON.—If your Honor please, the objector, in his objections filed, Mrs. Furnivall's objections, he states that that is unpatented land, and now he is introducing other evidence that he doesn't state in his objection. So we move, in as much as it is not stated in the objection—

Mr. WICKERSHAM. (Interrupting.) Yes, I am going to reach that matter, right now.

Q. With respect to lots 1, 2 and 3, in what block is that? A. Block 3, I think.

Q. Block 3, on the map of Ketchikan Townsite Addition, survey No. 1381. State if that land is patented land?

(Testimony of Frank J. Furnivall.)

A. No, sir; the title is in the Government right now.

Q. How did Mrs. Furnivall and those through whom she claims, secure possession of that property?

A. I presume by squatter's right. The first, original, possessor was a squatter, I presume, and she bought the squatter's right.

Q. In other words, it's public lands? A. Yes.

Q. It has been recently surveyed, however, by the Government surveyor? A. Yes, sir.

Q. Has Mrs. Furnivall a patent or deed from the Government for it? A. No, sir.

Q. She has only a squatter's claim to it? [60]

A. At the present moment; yes, sir.

Q. From the antecedent possessor she has a deed? A. Just a quitclaim deed.

Q. That's all; is it? A. That's all.

Q. Now, is that true of all the land shown on this map, in that particular addition?

A. I don't think any of these people have got their title yet.

Q. Has any application been made, or suggestion, to Mrs. Furnivall with respect to securing title from the Government?

A. Just about ten days ago, she received a letter from Mr. Parks.

Q. Who is Mr. Parks?

A. The trustee appointed by the Government.

Q. Of this land? A. Yes.

(Testimony of Frank J. Furnivall.)

Q. The land has been surveyed under instructions of the Government and they are ready now to issue deeds? A. Title; yes.

Q. Is that it?

A. Yes; they have written to us to ask us to put in notice of our claims.

Testimony of E. G. Morrissey, for Objectors.

E. G. MORRISSEY, called as a witness on behalf of the objectors, having been first duly sworn to tell the truth, the whole truth and nothing but the truth, testified as follows:

Direct Examination.

(By Mr. WICKERSHAM.)

Q. What record is this (indicating a book), Mr. Morrissey? is it volume 1?

A. Volume No. H. [61]

Q. Of deeds? A. Yes, sir.

Q. Of what records?

A. Of Ketchikan Precinct.

Q. The record of deeds of Ketchikan Precinct?

A. Yes, sir.

Q. I wish you would turn to the patent for the Florida Mining claim? A. Yes.

Q. What page does that begin on?

A. No. 4610. Begins on page 102.

Q. What is the date of that patent?

A. The first day of February, 1919.

Q. When was it recorded?

A. Filed and made of record this eleventh day of August, 1919, at nine o'clock A. M.

(Testimony of E. J. Morrissey.)

Q. In the records of the Recorder's Office in this precinct? A. Yes, sir.

Mr. WICKERSHAM.—Now, may it please the Court, we offer this in evidence.

Mr. SHOUP.—What claim is that, Judge?

Mr. WICKERSHAM.—Florida mining claim.

Mr. SHOUP.—Well, the Furnivall claim is not on that claim.

Mr. WICKERSHAM.—One is on this claim.

Mr. SHOUP.—The other—

Mr. WICKERSHAM.—(Interposing.) The other is on the public lands.

Mr. SHOUP.—That includes the Peterson claim.

Mr. WICKERSHAM.—That includes lots 1, 2 and 3, including the Peterson claim, which is on the public lands, and one claim—11—is on the Florida. [62]

Mr. WICKERSHAM.—May it please the Court, there are about 16 other claims in this patent, and I only want to offer so much of it as relates to the Florida. If you will read the description of the Florida from this patent, Mr. Morrissey.

WITNESS (Reads):

“Beginning, for the description of the Florida lode claim, at corner No. 1, a schistose stone in place, 24 by 18 by 6 inches, above ground, marked 4-1-769, with a cross on top at corner point, with mound of stone, identical with corner No. 4 of said Texas lode claim, from which U. S. location monument No. 4 bears south 29 degrees, 7 minutes and 46 seconds east, 1888.04 feet distant; thence

(Testimony of E. J. Morrissey.)

first course, north 30 degrees, 25 minutes east, 600 feet to corner No. 2, identical with corner No. 4, of said Homer lode claim, also marked 2.

“Thence, second course, north 59 degrees, 35 west, 10005 feet to corner No. 3, a schistose stone, 24x12x4 inches, marked 3-769, with a cross on top of the corner point, with mound of stone.

“Thence, third course, south 30 degrees, 25 minutes west, 300 feet to the point from which discovery bears south 59 degrees and 35 minutes east, 600 feet distant, 592.03 to intersect line 1-2 of survey No. 586 of the Afterthought lode claim. The Afterthought lode claim, 600 feet to corner No. 4, a schistose stone, 24 by 11 by 6 inches, marked 4-769, with a cross on top at corner point, with mound of stone.

“Thence, fourth course, south 59 degrees and 35 minutes East, 1500 feet to corner No. 1, to the place of beginning of survey or lode claim as above described, extending 1500 feet in length along said Florida vein or lode.” [63]

Q. Mr. Morrissey, it's been suggested that we haven't qualified you. What is your official position?

A. United States Commissioner and Recorder.

Q. In the Ketchikan Precinct? A. Yes, sir.

Q. Of Alaska? A. Yes, sir.

Q. You say this is one of the records of your office? A. Yes, sir.

Q. Now, may it please the Court, I'll also offer in evidence the granting clause. The rest of the

(Testimony of E. J. Morrissey.)

patent would be merely descriptive of other claims, and I will ask the witness to read this much.

Mr. SHOUP.—What is the object of that evidence?

Mr. WICKERSHAM.—I say, there are a lot of other claims mentioned in the same patent, and I am not offering anything with respect to them, but I am offering, now, the granting clause of the patent.

Mr. SHOUP.—Oh; no objection.

Q. You just read it.

The COURT.—Well, aren't the patents or the granting clause all alike?

Mr. WICKERSHAM.—It's all alike—

The COURT.—(Interrupting.) I don't see the necessity, then—

Mr. WICKERSHAM.—There are some reservations in those, and I wanted to show that there was no reservation that made any difference.

The COURT.—Well, you may show that.

Q. Just read that.

A. WITNESS (Reads): [64]

“Now, know ye that there is, therefore, pursuant to the laws aforesaid, hereby granted by the United States unto the said James A. Davis, the said mining premises hereinabove described and not expressly excepted from these presents, and all that portion of the said veins, lodes or ledges and all other veins, lodes and ledges, throughout their entire depth, the tops or apexes

of which lie inside the boundary line of said granted premises in said survey, extending downward vertically, although such veins, lodes or ledges, in their downward course, may so far depart from the perpendicular as to extend outside of the vertical side lines of said premises. Provided, that the right of possession to such outside parts of said veins, lodes or ledges, shall be confined to such portions thereof as lie between vertical planes drawn downward, though the end lines of said survey so continue in their direction that such planes will intersect such exterior parts of said veins or lodes or ledges. And provided further, that nothing herein contained shall authorize the grantee herein to enter upon the surface of a claim owned or possessed by another.

“TO HAVE AND TO HOLD such mining premises, together with all the rights, privileges, immunities and appurtenances of whatsoever nature, thereunto belonging, unto the said grantee above named, and to his heirs and assigns forever; subject, nevertheless, to the above-mentioned and the following conditions and stipulations:

“First, that the premises hereby granted shall be held subject to any vested and accrued water rights for mining, agricultural, manufacturing or other purposes, and sites for reservoirs used in connection with such water rights as may [65] be recognized and acknowledged by legal laws, customs and decisions of courts. And there is reserved from the lands hereby granted, a right of

way thereon for ditches or canals constructed by the authority of the United States.

“Second, that in the absence of necessary legislation by Congress, the Legislature of Alaska may provide rules for working the mining claims or premises hereby granted, involving easements, drainage and other necessary means to its complete development.

“In testimony whereof, I, Woodrow Wilson, President of the United States, have caused these letters to be made patent and the seal of the General Land Office to be hereunto affixed.

“Given under my hand in the City of Washington, the first day of February, in the year of our Lord 1919 and of the independence of the United States the one hundred and forty-third.

“By the President,

“WOODROW WILSON.

“By W. P. Leroy,

“Secretary.

“L. I. C. LAMAR,

“Recorder, General Land Office.”

Seal of the United States General Land Office.

Recorded Patent No. 663,496.

Filed and made of record this eleventh day of August, 1919, at nine o'clock A. M.

W. P. MAHONEY,

Recorder.

Testimony of F. J. Furnivall, for Objectors (Recalled).

F. J. FURNIVALL, recalled, having been previously sworn, testified as follows:

Q. Now, have you got a copy of the published document? A. Yes. [66]

Q. Mr. Furnivall, calling your attention, now, to the notice of delinquent taxes, sewer and street improvement assessments on real property, in the City of Ketchikan, filed in this court on May 22, apparently 22, I notice that you are said in this tax roll to be the owner of 92.68 feet, being lot 11 in block E, Schoenbar Addition, on January 1, 1922. Were you the owner at that time?

A. No, sir.

Q. Had not been since when?

A. Since September 5, 1919.

Q. And you are also said to be the owner in there of 79.79 feet, in Schoenbar Addition, lots 1 and 3 in block 3, at that time. What is the fact about that?

A. I never did own lot 3, and I had, up to September 5, 1919, been the owner of 1 and 2.

Q. In what addition?

A. In what was then known as the Schoenbar Addition.

Q. And these are now—where are those lots one and three now?

A. They are now 1, 2 and 3 in this new subdivision made by the Government.

(Testimony of F. J. Furnivall.)

Q. And not in this Schoenbar Addition at all?

A. No; the old tracts are all excluded. It was on the tracts all of which was excluded from the patent. They had 34 claims there.

Q. Do you know whether Mary M. Furnivall ever signed any petition for the improvement of these lots by the Harris Street Extension or road?

A. I do, sir.

Q. What is the fact about that?

A. She never signed it. [67]

Q. Do you know whether or not she made any protest against it? A. I do, sir.

Q. When?

A. The exact date I haven't got. I haven't got that exact date, but it is among the papers—somewhere in March.

Q. Look— 1900 and what? A. 21.

Q. In 1921? A. Yes.

Mr. WICKERSHAM.—I think that it is admitted in these pleadings, however, Mr. Winston, that that was March 3, 1921.

Mr. WINSTON.—Yes.

Mr. WICKERSHAM.—And it's admitted that the protest was signed on March 3, 1921.

Mr. WINSTON.—That is what it is dated.

Mr. WICKERSHAM.—Yes; that's what it is dated. I think that is all.

Cross-examination.

(By Mr. SHOUP.)

Q. This protest that you refer to, Mr. Furnivall,

(Testimony of F. J. Furnivall.)

is signed by Mary A. Furnivall as your wife,—
she is your wife, is she not? A. Yes.

Q. It was signed after these improvements had
all been made? A. Yes, sir.

Q. Improvements on the Harris Street addition,
building the street. She protested against the pay-
ment of the taxes. That was after the improve-
ments had been made and the tax levy had been
made and apportioned? A. Yes, sir.

Q. Is it not? [68] A. Yes, sir.

Q. Now, Mr. Furnivall, how many lots were
deeded to her? A. How many lots did I?

Q. Yes; how many? A. In September, 1919?

Q. Yes; how many lots?

A. I deeded her 150 feet, more or less along
the Schoenbar tram.

Q. Was that all that was deeded to her?

A. That was all that was deeded to her.

Q. That's three lots, is it?

A. Yes; the records show.

Q. How? A. The records show three.

Q. That is what I am asking.

(Witness excused.)

Testimony of Will H. Winston, for Objectors.

WILL H. WINSTON, called as a witness on
behalf of the objectors, having been first duly sworn
to tell the truth, the whole truth and nothing but
the truth, testified as follows:

Direct Examination.

(By Mr. WICKERSHAM.)

Q. State your name, Mr. Winston?

(Testimony of Will H. Winston.)

A. Will H. Winston.

Q. What official position do you now hold?

A. City Clerk and municipal magistrate, city of Ketchikan.

Q. For how long have you been city clerk of Ketchikan? A. Since May, 1919.

Q. I call your attention now to the manner of the proceedings in the improvement of Harris Street Extension. You may state to the Court where that street is, in general phrases? [69]

A. The street commences at the end of the old townsite and goes through the Florida mining claim and extends on past the Florida mining claim into the Texas mining claim.

Q. Do you know the length of the improvement?

A. No, sir. I can give you approximately the length from my memory only.

Q. Approximately 876 feet?

A. I thought it was more than that.

Q. Well, how much?

A. I couldn't tell you from memory.

A. I call your attention to a map called "U. S. Survey No. 1381," being a Government survey of the premises north and south of Harris Street Extension, and ask you as to what lots there were assessed?

A. Lots 1, 2, 3, 4, 5, 6 and 7, in block 3.

Q. They are all on the north side of Harris Street? A. They are.

Q. Was any assessment made on any property on the south side of Harris Street?

(Testimony of Will H. Winston.)

A. There was not.

Q. Now I call your attention to another chart, called "Plat of Schöenbar Addition, part of Florida Mining Claim, Ketchikan, Alaska, April 15, 1921, by Joseph Ulmer, C. E." and ask you to say what lots on that plat were also assessed?

A. Lots 2, 3, 4, 7, 6, 8, 9, 10, and 11, I believe. If you will bring in the records, I'll be able to tell you absolutely. Give me that book (indicating). (Counsel hands book to witness). All these lots along this north side.

Q. That you have enumerated?

A. Yes. [70]

Q. That you have named? Was any assessment levied, of any kind, upon any property on the other side of the street, in front of those lots?

A. No, sir.

Q. Now, Mr. Winston, have you got the original petitions upon which this work was done?

A. Yes, sir.

Q. I wish you would produce them.

(Witness does so.)

Q. Which is the first one you have, Mr. Winston?

A. The first one was filed with the city clerk on January 15, 1919.

Q. Just read it.

(Witness reads as follows:)

"To the Honorable Mayor and Common Council
of the City of Ketchikan:

"We, the undersigned, being the owners of more than two-thirds of the real estate fronting on

(Testimony of Will H. Winston.)

the westerly side of the Schoenbar tram, within the city limits, from the intersection of Harris Street with the tram, do hereby respectfully petition your honorable body to construct from said intersection, to the city limits, on the northerly side of Ketchikan Creek, a street of the mean width of twenty feet, with provision for a sidewalk in the future, and we each for himself or herself, hereby agree to pay *pro rata* per front foot, our due proportion of the total cost of construction, and hereby acknowledge such expense to be a lien on the property of the undersigned, abutting on said proposed street to the extent of such *pro rata*. [71]

Name.	Frontage
Alaska Investment Co., F. E. Ryus, Pres.	
F. J. Furnivall	100 ft., more or less
W. P. Boos	70 ft., more or less
John Koel	100 ft., more or less
E. M. Horton	34 ft., more or less
Beatrice P. Dickinson, M. D.	80 ft., more or less

Q. Can you tell from the records of the City Council of Ketchikan what was done with that petition?

A. The petition was read and referred to the street committee.

Q. What was ever done with it after that?

A. That was before my time on the Council, and I don't know what was done with it.

Q. Now, the next one.

(Testimony of Will H. Winston.)

Mr. SHOUP.—In reading that petition, I think you read it “two-thirds of the property.” I think you left out the words “in value.”

The WITNESS.—No. “Of more than two-thirds of the real estate fronting on the westerly side of Schoenbar tram.” That’s the first petition.

Q. Yes. Now, the second.

The COURT.—You say you could find nothing after its reference to the committee in the way of a report of the committee on that petition?

The WITNESS.—No; I said that I haven’t been able to find it. The matter was called to my attention this morning, and I haven’t been able to find the time since to look it up. It was before my time and it’s all in longhand. [72]

Q. All right, now, Mr. Winston.

(Witness reads:) The second petition is dated Ketchikan, Alaska, September 7, 1920.

“To the Common Council,

“Ketchikan, Alaska:

“We, the undersigned property owners along the right of way and public thoroughfare following the course of and upon which is located the tramway belonging to the Ketchikan Consolidated Mines Company, and locally known as the Schoenbar tram, do herewith respectfully petition your honorable body to proceed at the earliest opportunity to erect, construct and maintain a temporary street for vehicle passage; said street to be 16 feet in width, with a four-foot sidewalk. We here-

(Testimony of Will H. Winston.)

with agree to pay our respective *pro rata* of the expense of same.

“Mrs. O. F. HILL.

“ED. M. HORTON.

“C. V. TRILL.

“M. H. SMITH, Sr.

“J. M. PETERSON.

“C. A. SMITH.

“M. H. SMITH, Jr.

“R. A. BARTHOLOMEW.

“W. P. BOOS,

“By Mrs. WM. P. BOOS.

“JOHN KOEL.”

Q. What was done with that petition?

A. Accepted September 8, 1920, and placed on file.

Q. What else was done with it, Mr. Winston—anything else? A. No, sir.

Q. Now, there was another petition. Now, with respect to this petition, Mr. Winston, was it considered by the Council and by you with respect to its validity at the time it was filed? You were then city attorney? A. Yes, sir.

Q. You were then city clerk?

A. Yes, sir. [73]

Q. What about that?

Mr. SHOUP.—I think, if your Honor please, that is immaterial.

The COURT.—That's a question. I think the question brings out whether it was considered or not.

(Testimony of Will H. Winston.)

The WITNESS.—What is the date of it?

Mr. WICKERSHAM.—The date is September the eighth. I want to know the action of the Council.

The COURT.—Yes.

A. September 8; what year?

Q. September 8, 1920.

A. I'll read the minutes on that date:

“A special meeting of the Common Council of the City of Ketchikan, was held on the above date. Present were: Mayor D. W. Hunt, councilmen John A. Anderson, George Morrison, William Anderson and H. Nixon. Absent councilmen: G. E. Paup and Ed. J. Williams.

“The Mayor announced that the meeting had been called for the issuance of dance hall permits and —”

Q. (Interrupting.) Well, just in relation to this.

A. That's what I am getting to. (Continues reading):

“Petition of the property owners on Harris Street or Schoenbar tram, for a street, was read and a motion was duly and regularly made and carried that the petition be accepted and placed on file, a survey ordered and the city engineer to have specifications for the same in at the next meeting so that bids could be called for.”

Q. Now there was another one?

A. Yes, sir.

Mr. SHOUP.—This is the second petition?

Mr. WICKERSHAM.—The second petition.

(Testimony of Will H. Winston.)

Q. Now, there was a third petition. Isn't it true that after this petition was presented, you prepared another petition? A. No, sir.

Q. What did you have to do with the preparation of the third petition?

A. I prepared the third petition.

Q. At whose request?

A. I don't think it was at the request of anybody. I think at that time, I told the people, told the council that it would be best for me to prepare petitions in the future.

Q. Isn't it true that you told them that this petition was irregular and insufficient and that you would prepare another one?

A. I thought that another petition had better be presented.

Q. Well, you heard my question?

A. I told them that I thought another petition had better be presented.

Q. That you thought this was insufficient?

A. I thought it didn't cover the point.

Q. And this petition, then, was not further acted upon in any way, was it?

A. The Council ordered the city engineer to go ahead with it.

Q. When was that done—just as you have read?

A. Just as I have read.

Q. Now about the third petition.

(Witness reads:)

“To the Honorable Mayor and City Council of the City of Ketchikan, Alaska:

(Testimony of Will H. Winston.)

Q. That doesn't describe the lots or anything of that kind.

(Witness, continuing:)

"We, the undersigned, constituting more than two-thirds [75] in value of the property owners whose property abuts upon the proposed improvement, hereby petition your honorable body to construct a sixteen-foot plank roadway and a four-foot sidewalk and to lay out, establish and maintain a forty-foot right of way, from the present Harris Street, in front of the Parker house to and past the Harry Smith house or to the city limits.

"And we agree, hereby agree to pay to the city of Ketchikan our proportionate share of two-thirds of the cost of such improvement and that such sum be a specific lien upon our respective property abutting on said improvement.

"Name

Description of Property No. feet

"C. V. TRILL.

"C. A. SMITH.

"LORETTA C. HILL.

"M. H. SMITH.

"JOHN KOEL.

"MR. W. P. BOOS.

"By Mrs. W. P. BOOS.

"E. M. HORTON.

"P. M. ZILLER.

"By W. F. STIVEN, Attorney in fact."

Ordered approved and filed, October 5, 1920.
Will H. Winston, City Clerk.

(Testimony of Will H. Winston.)

Q. Well, tell of the proceedings of the Council with respect to that petition and say what the Council ordered done with it?

(Witness reads:)

“The amended petition on Harris Street was read and on motion by Councilman Paup, seconded by Councilman Morrison, the same was approved and ordered placed on file. The motion carried. A motion was regularly made and carried [76] that bids be called for on the work on Harris Street, to be in by the next regular meeting, by the city clerk.”

Q. Was that done? A. Yes, sir.

Q. And bids were received? A. Yes, sir.

Q. From whom?

A. Well, I think there was about a half-dozen bids.

Q. To whom was the contract let?

A. To Houck & McGrath.

Q. Was the street constructed? A. Yes, sir.

Q. Under that contract? A. Yes, sir.

Q. How much was paid, if you remember, in round numbers? A. No, I don't.

Q. Well, did the city pay it? A. Yes, sir.

Q. Something over four thousand dollars. Can you find out just what it was?

A. \$4958.80. I have a letter from the engineer's office, showing the exact figures.

The COURT.—It is admitted on the—

Mr. WICKERSHAM.—Yes, I think it is. It is admitted that the contract price was \$4958.80;

(Testimony of Will H. Winston.)

that \$1656.95 of that amount was paid by the city to the contractor on September 1, 1920, and that \$3301.85 was paid January 12, 1921; and that something like \$17.40, for publication and so forth, was paid at another time. That's about correct, isn't it?

A. I think that is about correct. [77]

Q. In the matter of ordering this improvement, was any ordinance passed by the city at any time?

A. No, sir.

Q. You have read the whole proceedings with respect to ordering that work done?

A. You mean all the minutes in regard to it?

Q. With respect to ordering the work; yes.

A. No, I don't think I have. I think it would take more than an hour to read all the minutes with respect to the orders given on that work.

Q. But there was no ordinance passed?

A. No.

Q. What other orders did you have in the matter? You are one of the attorneys in this case?

A. Yes, sir.

Q. For the City? A. Yes.

Q. And you have the matter very clearly in mind? A. Well, I think so.

Q. What other ordinances or orders were made ordering this work to be done?

A. Well, I have one in particular that I remember, and that was Mr. Furnivall had the engineer change the grade of the street so that he could put his garage in a different location, and, I don't

(Testimony of Will H. Winston.)

know—there was some trouble about that—and the engineer changed the grade—

Q. (Interrupting.) Was an ordinance passed in relation to it? A. No.

Q. Was any ordinance passed, authorizing this work, of any [78] kind? A. No, sir.

Q. There were two resolutions passed?

A. Yes. I think there were three.

Q. They are set out in the pleadings in this case and admitted? A. Yes, sir.

Q. Was there any other authority ordered or put forth by the City Council with respect to ordering this work done, except those resolutions and the order that you read? A. Any—

Q. Any ordinance or resolution other than those in the pleadings? A. No, sir.

Q. Those are all? A. Those are all.

Q. So that the validity of the assessment depends upon those resolutions?

Mr. SHOUP.—I object to that, if your Honor please.

Mr. WICKERSHAM.—Well, that is not a very happy way of putting it in. I'll withdraw that. But witness is one of the counsel and I thought I could—

The COURT.—(Interrupting.) I want to ask this right there: Was there any return of any estimate made to the Council of the value, of the amount of this work—what it would cost?

The WITNESS.—I think that the engineer gave an estimate of the value; in fact, before the bid

(Testimony of Will H. Winston.)

was accepted, the engineer advised what that work should cost, and it is my remembrance that the work was done a good deal under what he said it would cost. The bid— [79]

Q. (Interrupting.) Was there any hearing held by the City Council with respect to determining the benefits to the property to be assessed, in any way?

A. Well, all the property that is along that street—

Q. (Interrupting.) No; I asked you if there was any hearing held by the City Council?

The COURT.—Any notice?

Q. Any notice or hearing held for the purpose of determining the question of benefits to the property, or damages?

A. They appeared at every meeting. That is the only way I can answer that.

Q. That's all the answer you wish to give to that?

A. That is the only answer I can give.

Q. Was there ever any finding made by the City Council with respect to the benefits or damages to be attached to or accruing to this property?

A. Yes, sir.

Q. When was that done?

A. When the resolution was passed.

Q. Which resolution?

A. The first resolution.

Q. Was there a hearing held at that time?

A. Oh, I misunderstood your question. You asked me if there was a hearing held—

Q. (Interposing.) Yes.

(Testimony of Will H. Winston.)

A. I understood your question to be whether the Council assessed any benefits.

Q. No, no; I didn't ask you that. I asked you if there was any notice had, notice given, any hearing held, so that the owners of the property could be held with respect to assessments [80] or benefits or damage to their property?

A. No published notice was sent out other than a notice of council meeting.

Q. That's all? A. That's all.

The COURT.—Was there any notice given at or prior to the time of the assessment, of the amount of the assessment against each lot belonging to a particular property owner, so that he could object to the assessment?

A. The amount of the assessment wasn't made until the resolution was passed. It wasn't suggested.

The COURT.—Was there any notice given of the assessment to the property owners so that they could object to the amount of the assessment on a particular lot?

A. No notice to property owners.

The COURT.—Then this assessment was made all *ex parte*, was it? A. Yes, sir.

Q. (By Mr. WICKERSHAM.) It was all made long after the work was done—these resolutions or the assessments?

A. There were two resolutions passed and the reason for the change in the resolution was to have the property owners present there.

(Testimony of Will H. Winston.)

Q. On February second, the first of these resolutions was passed? A. Yes.

Q. And the work had been completed in December and January, previous to that? A. Yes.

Q. Now, no ordinance had been passed by the City, authorizing [81] this work in any way, up to February 2, 1921? A. No.

Q. And then, this first resolution was passed, which is set out in the pleadings? A. Yes.

Q. Thereafter a second resolution was passed on December 21, 1921? A. Yes.

Q. Is that in the pleadings?

A. Yes. And the reason that that resolution was passed was because the property owners came there and objected to the first one.

The COURT.—All the property owners?

The WITNESS.—The ones that were affected by it.

Q. Did Mrs. Furnivall appear?

A. Mrs. Furnivall appeared by Mr. Furnivall.

Q. I did not ask you that.

A. She wasn't there personally, but he was there.

Q. And a lot of other people? A. Yes.

Q. Who was there?

A. That I am unable to say. There were so many different times. I can tell you the ones that appeared there at various times, but the exact times they appeared, I couldn't be able to tell you.

Q. Now, Mrs. Furnivall objected in writing, didn't she? A. Some time afterward.

(Testimony of Will H. Winston.)

Q. Well, now, get that and read it, won't you please, to the Court—her objections?

(Witness reads:) “Ketchikan, Alaska—” [82]

Q. (Interrupting.) What is the date of that?

A. I'll give you that if you wait a minute. (Continues reading:)

“Ketchikan, Alaska, March 2, 1921.

“To the Mayor and Common Council of Ketchikan:

“We, the undersigned occupiers and residents abutting what is locally known as Shoenbar Tram, protest against the assessment levied February 2, 1921, for street improvements for several reasons, amongst which are the following, viz.: first, that all the abutting owners have not been assessed; second, that the petition under which the work was carried on had not the support of sufficient in interest.

“J. M. PETERSON.

“W. A. HAGEVIG.

“MARY M. FURNIVALL.

“R. E. MacGLASHAN.

“W. P. BOOS.

“BEATRICE P. DICKINSON.”

Q. Were those the character of the objections made by the other people who appeared there?

A. They all didn't object.

Q. They all did not object? A. No.

Q. Well, these people did?

A. These people did; yes, sir.

Q. What is the date of that?

(Testimony of Will H. Winston.)

A. That is dated 3-2-21.

Q. March 3, 1921? A. March second, 1921.

Q. March second. And the resolution had been passed February 2, 1921? A. Yes, sir.

Q. Now, subsequently there was another resolution? A. Yes, sir. [83]

Q. In the meantime you had had a deed to some of that property, Mr. Winston, had you not?

Mr. SHOUP.—What? A deed to what?

Mr. WICKERSHAM.—To some of the property on the south side of the street.

A. I don't recall the date of that. You have got it there, I think.

Q. It's set out. A. In your objections?

Q. Yes; set out in my objections. It's an exhibit. A. No; not the deed—is it?

Q. It's Exhibit "C"; dated November 3, 1921.

A. Thirtieth of November, you say here.

Q. Thirtieth of November, 1921?

A. In your objections.

Q. Well, it's the third, if your Honor please.

The COURT.—Yes; it's here as November 3d. I think a copy of the deed is attached—

Mr. SHOUP.—It's Exhibit "C"?

Mr. WICKERSHAM.—Exhibit "C."

Q. You have examined that exhibit, Mr. Winston? A. I think I have; yes, sir.

Q. I think you told me that you thought it was a correct copy?

A. I think so. You're very good in that way.

Mr. WICKERSHAM.—I desire to read that

deed, then, into this record, may it please the Court.

The COURT.—Well, all right.

Mr. WICKERSHAM.—(Reading:) “This indenture, made the third day of November, 1921, by and between the Ketchikan Consolidated [84] Mines Company—

Mr. SHOUP.—(Interrupting.) Your Honor, it seems to me it’s unnecessarily encumbering the record.

The COURT.—He can read it.

Mr. WICKERSHAM.—It’s very short (continues reading:) —“a corporation, organized under the laws of the State of Maine, appearing by Charles H. Cosgrove, its duly authorized attorney in fact, first party, and the City of Ketchikan, a municipal corporation of the Territory of Alaska, second party; Witnesseth, That in consideration of One (\$1.00) Dollar and other valuable considerations paid to the said first party by said second party, receipt whereof is hereby acknowledged, said first party does herewith grant, convey and dedicate to said second party, for the purpose of a public road only, all of that certain strip of ground beginning at the southerly end of Harris Street, so called, where the same enters the Florida mining claim and continuing across said Florida mining claim, with a width bounded by the westerly side of said street, as platted by Joseph Ulmer, C. E., on the one side and the middle of Ketchikan Creek on the easterly side.

(Testimony of Will H. Winston.)

“IN WITNESS WHEREOF, the said first party has caused these presents to be executed by its attorney-in-fact this third day of November, 1921.

“KETCHIKAN CONSOLIDATED MINES
CO.

“By CHAS. H. COSGROVE,
“Attorney in Fact.

“Witnesses:

“WILL H. WINSTON.

“J. A. CLARY.

United States of America,
Territory of Alaska,—ss. [85]

“This is to certify that on this third day of November, 1921, before the undersigned, a notary public for Alaska, duly commissioned and sworn, personally appeared Chas. H. Cosgrove, known to me to be the attorney-in-fact of the Ketchikan Consolidated Mines Co., and who acknowledged that he signed and sealed the foregoing instrument as the free act and deed of said Ketchikan Consolidated Mines Co., and he further acknowledged that he was fully authorized to execute the same.

[Seal]

“WILL H. WINSTON,
“Notary Public in and for Alaska.

“My commission expires June 16, 1925.”

Q. Now, in the original of this deed, I notice it was dated 1922 in two places and that you changed that from 1922 to 1921 and put your initials there, is that correct? A. I don't know; I think it is.

Q. And if so—

A. If the same is so, it is.

(Testimony of Will H. Winston.)

Q. You mean, if that is true, that it was a mere clerical error and corrected by you and that was all?

A. Yes.

Q. Now, this deed from the Consolidated Mines Company was accepted and recorded by the city, was it, Mr. Winston? A. Yes, sir.

Q. Have you got any record of that?

A. Yes, sir.

Q. Can you find that quickly? A. Yes, sir.

Q. Please do it and read it to the Court. [86]

A. You have the date of acceptance, Judge?

Q. What is that?

A. Haven't you got the date of acceptance in your objections?

Q. Yes, I have.

A. (Reads:) "January 4, 1922. A motion was duly and regularly made and carried that the deed of dedication of Harris Street by the Ketchikan Consolidated Mines Company be accepted and recorded by the city clerk."

Q. What is that from?

A. From the minutes of January 4, 1922.

Q. Minutes of the Council?

A. Common Council, City of Ketchikan.

Q. Now, after this deed was accepted by the city from the Mines Company, there was a new resolution made by the Council, as set out in the pleadings in this case, is that true?

A. I believe so; yes, sir.

Q. Under date of—what date was that? Under the date of December 21, 1921.

(Testimony of Will H. Winston.)

A. No, then; that isn't so.

Q. Isn't it? A. No.

Q. Turn to pages 45 and 46. A. Yes, sir.

Q. What is the fact about that?

A. There is a resolution on December 21, 1921, and this deed was accepted and ordered filed on the 4th of January, 1922.

Q. I didn't ask you about this deed.

A. Yes; you did.

Q. And it was accepted? [87] A. Yes.

Q. Then after the date of it, after the date and delivery of it—it's dated October third?

A. Yes, sir.

Q. When was it delivered to you?

A. I don't remember.

Q. You made those corrections?

A. I think so.

Q. Now, after that, there was a new resolution passed?

A. I don't remember about that. I don't recall.

Q. Well, you recall that was done on the twenty-first day of December, don't you? A. Yes, sir.

Q. We call attention to the record of that.

A. Yes; there was a resolution passed on the twenty-first day of December, but I don't know whether we had the deed at that time or not. I wouldn't swear to it.

Q. But you will swear that you acknowledged it and made those corrections on November third?

A. Yes, sir.

Q. What became of it then?

(Testimony of Will H. Winston.)

A. I don't remember.

Q. Wasn't it left with you and didn't you put it in the city safe? A. I don't remember.

Q. You're sure about that?

A. I know that Mr. Cosgrove and I had some discussion about the description of this property. I know that I had it prior to the time that it was accepted in my office, but just when I had it, I don't know. [88]

Q. Was it exhibited to the members of the City Council? A. It certainly was.

Q. Well, when? A. On January fourth.

Q. Before that? A. No, sir.

Q. You're sure about that?

A. I know it was exhibited to them first.

Q. There was no minutes in the record?

A. No; there was no minutes of record.

Q. How did you come to get that deed?

A. Asked Mr. Cosgrove for it.

Q. Why?

A. Because I thought there would be a question as to the ownership of that land between the street and the creek, and I asked him if he would dedicate that to the city, so there would be no question about it. May I go further into the matter since you asked me the question?

Q. Yes.

A. And that for some years past your client, Mr. Furnivall and Mr. J. C. Barber have been, well, couldn't agree upon whether there was a dedication of a street through this mining claim or not.

(Testimony of Will H. Winston.)

Barber claims there is and Furnivall claims there wasn't. I believe that is the way it was; that was the dispute. So, in order to make sure that there was no dispute on our account, I asked Mr. Cosgrove if he would give the city a dedication of the street, and he did.

Q. Clear into the middle of the creek?

A. Yes, sir.

Q. Now, that was recorded, then? [89]

A. Yes.

Q. By the city? A. Yes, sir.

Q. Did you look up the question of title to the lots, then, beyond the Florida claim, on the public—on the next claim there, that were assessed for this Harris Street, for this Harris Street improvement?

A. Did I look up the title?

Q. Yes. A. What do you mean?

Q. Did you discover whether or not it was patented ground, or whether it was public lands? You were acting as city attorney at that time?

A. Yes; by that time, when it had been surveyed by the Government surveyor.

Q. You are sure about that now?

A. I believe so. I can tell you by referring to your plat here.

Q. Yes; look at the plat. Get the dates when it was authorized. Theile's certificate is in the middle.

A. (Reads:) "Survey commenced April 9, 1921; survey completed May 31, 1921." And at that time it was surveyed.

(Testimony of Will H. Winston.)

Q. When was the improvement made? When was this street built? A. Some time in 1920.

Q. In December, 1920, and January, 1921?

A. Yes.

Q. Prior to this survey?

A. Yes; but you asked me—

Q. (Interrupting.) It doesn't make any difference. Now, then, [90] I want to know whether you looked up the question of whether that was public lands or not at that time.

A. At what time?

Q. At all those dates mentioned just now?

A. It's not public land now; it's patented land now.

Q. Who has the patent?

A. George A. Parks, townsite trustee, from the United States Government.

Q. He is trustee for the purpose of conveying patent title to the other people?

A. Patent lands.

Q. Of giving deeds? A. Yes.

Q. When did he secure that patent?

A. I can't tell you the date without referring to the published notice in the "Chronicle."

Q. Quite recently?

A. No; it isn't quite recently.

Q. Well, how recently?

A. Oh, December or January, I would say.

Q. Of this last year?

A. Of this last year?

Q. Long since all these resolutions were passed?

(Testimony of Will H. Winston.)

A. Oh, no; not long since, because the resolution was passed in December, 1921, and this was patented, the patent was issued some time in December or January.

Q. 1921?

A. December, 1920, or January, 1921.

Q. You are sure about that?

A. No; I said I would have to refer to that published notice, [91] but I believe that is the time.

Q. But at the time when these street assessments were levied upon this property, you did not yet have any authority for conveying title?

A. I don't think so.

Q. Now, have you stated to the Court, Mr. Winston, as fully as you want to; what steps were taken by the City Council to put this lien upon this property belonging to Mrs. Furnivall? If there is any other fact that you think—

A. Well, I think, Judge—

Q. (Interrupting.) It's not argument. I don't want you to argue it.

A. I'm not arguing. I say, I think if there are any other facts, we'll bring them out in our evidence.

Q. Now, do these same facts, with reference to Mrs. Furnivall's property, apply also with equal force to the other objectors' property—each of them?

A. The facts with regard to the records, you mean?

Q. Yes. A. Yes, sir.

(Testimony of Will H. Winston.)

Cross-examination by Mr. SHOUP.

Q. Now, Mr. Winston, is there any property on the south side of this road which has been constructed north of Ketchikan Creek, that is assessable? A. No, sir.

Mr. WICKERSHAM.—Now, we object to that, may it please the Court. There is no such thing in this, in this patent, as Ketchikan Creek. The whole of that land was conveyed to the owners by the patent of the Florida Claim, and while [92] it is true that there is a stream along there, the property all belonged to—

The COURT. (Interrupting.)—It takes in the boundaries of the stream.

Mr. WICKERSHAM.—It is not a meandering stream at all.

Mr. SHOUP.—We want to show that no property on that side could derive any benefit from this.

Mr. WICKERSHAM.—We just want to make our objection.

The COURT.—That is a question of proof. You ask if there is any property to the south of the street—let's see; that is all assessed on the north side. You ask if it is assessable. Now, that is a legal conclusion.

Mr. SHOUP.—No, I was going to follow that up and show why it isn't assessable.

Mr. WICKERSHAM.—We object to that because this witness has nothing whatever to do with it.

The COURT.—He is not passing upon whether

(Testimony of Will H. Winston.)

it is assessable or not. Ask him whether any benefits could be derived from putting this street in.

Mr. WICKERSHAM.—We object to that.

Q. I ask you as to the benefits to be derived—

Mr. WICKERSHAM. (Interrupting.)—This witness can't determine as to that question.

The COURT.—He can testify to that.

Mr. WICKERSHAM.—That is over our objection.

Q. Do you know whether or not any property south of this road north of Ketchikan Creek has been assessed for taxes? A. It has not.

Q. Now, with reference to this protest signed by Mrs. Furnivall, that was made after this work had been done and paid for? A. Yes, sir. [93]

Q. Was it not? A. Yes, sir.

Q. This work was contracted for by the city, was it not? A. Yes, sir.

Q. And bids were made for it?

A. Yes, sir; public notice and call for bids.

Mr. WICKERSHAM.—We object to all this testimony, may it please the Court, because it is immaterial, irrelevant and incompetent and not proper cross-examination.

Mr. SHOUP.—That is proper cross-examination, if your Honor please.

The COURT.—You may answer, subject to the objection.

Q. Now, do you know whether or not the property owners along this street, on the north side of Ketchikan Creek, knew of this contract being let for these

(Testimony of Will H. Winston.)

improvements, and that a contract had been made with the city?

Mr. WICKERSHAM.—We make the same objection—incompetent, immaterial and irrelevant.

The COURT.—It may be received, subject to the objection. A. Yes.

The COURT.—Do you know whether they all knew?

A. Yes, sir; I know that they did know—all of them.

Q. Now, this last resolution that Judge Wickersham called your attention to, dated December 21, 1922, that was simply a recheck, was it not, of the former resolution?

Mr. WICKERSHAM.—I object to that. The resolution shows and it's the best evidence.

Mr. SHOUP.—The resolution isn't in evidence. You asked him in regard to this resolution.

Mr. WICKERSHAM.—Well, it is admitted in the pleadings. [94]

Q. Did the City Council consider this property on the south side of the creek of any value?

Mr. WICKERSHAM.—That is objected to for the same reason—incompetent, irrelevant and immaterial. The City Council's records are the only records that can be appealed to in this case.

The COURT.—It seems so to me, but he may answer, subject to being stricken.

A. The City Council took the matter under consideration and decided that the property on the south side could not be assessed; that it was of no value.

(Testimony of Will H. Winston.)

You allege that in your objections, that it is of no value.

Mr. WICKERSHAM.—You're mistaken about that. I merely allege that the *scrip* you got from Charley Cosgrove was of no value.

Mr. SHOUP.—That's all.

Redirect Examination By Mr. WICKERSHAM.

Q. You say the City Council did that—when and where? Is there any record of it anywhere?

A. It would be absolutely impossible for me to take down every word that is spoken at a council meeting.

Q. I appreciate that.

A. But I know positively that the Council took it into consideration.

Q. Did they make any finding, or make any record of it anywhere? A. Yes, sir. [95]

Q. Where?

A. When they passed the resolution.

Q. And the resolution is the only record they made? A. That is the only record.

Recross-examination By Mr. SHOUP.

Q. What is the character of this land between the road and Ketchikan Creek?

A. It is a very narrow strip of land, running from nothing to a few feet in width. At places there is no land at all; at other places there are a few feet, and the idea was to cover the entire—

Mr. WICKERSHAM. (Interrupting.)—Just wait a moment. Answer the question.

Q. What is this paper, Mr. Winston (handing paper to witness)?

A. That is a drawing made by the city engineer.

Q. That shows where the street runs?

A. Yes, sir.

Q. And the land between the street and the creek, does it not? A. Yes, sir.

Mr. WICKERSHAM.—You going to offer that in evidence?

Mr. SHOUP.—No, I won't.

Mr. WICKERSHAM.—Well, I would like for the Court to look at this very carefully and see the extent of the land lying between that and the creek.

Mr. SHOUP.—Well, we're willing to have it introduced in evidence, with the privilege of withdrawing it.

The COURT.—You can get a blue-print of it.

The WITNESS.—That's our original drawing.
[96]

Mr. WICKERSHAM.—But, we'd like to have it understood that there should be an exact blue-print put of it into the record.

The COURT.—You can exchange it and have a blue-print put in.

(Whereupon said drawing was received in evidence and marked objector's exhibit.)

Mr. SHOUP.—I believe that's all.

Mr. WICKERSHAM.—That's all.

(Witness excused.)

Testimony of J. M. Peterson, for Objectors.

J. M. PETERSON, one of the objectors herein, called as a witness on behalf of the objectors, having been first duly sworn to tell the truth, the whole truth and nothing but the truth, testified as follows:

Direct Examination By Mr. WICKERSHAM.

Q. State your name? A. J. M. Peterson.

Q. You're the other objector in this case?

A. Yes, sir.

Q. What land do you own over on Harris street extension, Mr. Peterson?

A. I think it is 2; I'm not sure.

Q. Is it between the two lots owned by Mrs. Furnivall? A. Yes, sir.

Q. From whom did you purchase your lots?

A. From Mrs. Furnivall?

Q. In what way? A. By a contract.

Q. Have you paid for it yet and got a deed?

A. Not yet; no, sir.

Q. Through whom do you make your payments?

A. Through the Miners' & Merchants' Bank, to Mrs. Furnivall.

Mr. WICKERSHAM.—I think that's all. [97]

Mr. SHOUP.—That's all. I desire to make a motion now.

The COURT.—I'll hear your motion.

Mr. SHOUP.—Now comes the defendant and moves for a judgment of nonsuit, on the ground that no evidence has been introduced by the objector that is material to any issue in this proceeding. There is no evidence at all produced, to show that

(Testimony of J. M. Peterson.)

two-thirds of the owners of this property, in value, did not sign this petition. The only thing that has been relied on at all, that I can see, is these lots—that there is some property south of the street that has not been assessed, but I can't see any evidence now that has been introduced that could set aside this assessment. The matter of the name cuts no figure whatever, in whose name it is assessed. This is assessed by the Council; not by the City Assessor, but by the City Council, in the name of Mary M. Furnivall. I contend that that makes no difference whatever, and that this is a lien on the property. This procedure is in the nature of an action *in rem*, and it makes no difference whatever who the owner of the property is. Besides, Mrs. Furnivall has admitted by her pleadings that she is the owner of this property, and I contend that there has been no evidence at all introduced upon which this court can set aside this assessment. It was assessed regularly and according to form in every way, and while the objector has stated that it was not and some question in regard to the jurisdiction of the court is raised, I can see nothing whatever in the evidence.

I therefore think we are entitled to a judgment of nonsuit in this case. [98]

Mr. WICKERSHAM.—Well, I suppose the evidence is all in, and that raises the whole question before the Court.

The COURT.—I don't know whether they are go-

(Testimony of J. M. Peterson.)

ing to introduce any evidence on the other side. I'll deny the motion.

Mr. SHOUP.—Yes; we want to introduce some evidence. I note an exception to the overruling of the motion.

No other or additional testimony was offered by either said City or by said Objectors, or either of them.

Whereupon the Court, after argument, took the matter under advisement and after the term had adjourned and on, to wit: July 22, 1922, at the subsequent term at Juneau, delivered its written opinion herein, and caused the same to be filed with the Clerk at Ketchikan, which Court was not in session there.

And on October 5, 1922, after the adjournment of the term at which the trial was held and during the subsequent Juneau term, the Court made its findings of fact and caused the same to be filed with the Clerk at Ketchikan on the 5th day of October, 1922, the Court not being then in session at Ketchikan.

Said findings of fact and conclusions of law are and were as follows:

In the District Court for the Territory of Alaska,
Division No. One, at Ketchikan.

No. 537—KA.

In the Matter of the Delinquent Tax Roll for the
CITY OF KETCHIKAN,

vs.

MARY M. FURNIVALL,

Objector.

Findings of Fact and Conclusions of Law.

This cause having come regularly on for trial on the third day of June, 1922, on the pleadings theretofore filed herein, and said cause having been tried before the Court without a jury on said day, James Wickersham, Esq., appearing for the objector, and James M. Shoup, Esq., and Will H. Winston, Esq., appearing for the City of Ketchikan, and after hearing [102] the allegations and proofs of the parties, the arguments of counsel, and being advised in the premises, and having taken the matter under advisement, now on this, the fifth day of October, 1922, at Juneau, Alaska, the Court hereby makes and files its findings of fact and conclusions of law in said cause, as follows:

FINDINGS OF FACT.

1. That Mary M. Furnivall, at the time of filing in this Court of the Delinquent Tax Roll of the City of Ketchikan for that certain street improvement known as Harris Street Extension in said

Ketchikan, was entitled to the possessory title to lots No. 1 and 3 in block No. 3, Townsite Addition to the City of Ketchikan, Alaska; that said Mary M. Furnivall is the owner of lot 11 in block E, Schoenbar Addition to the City of Ketchikan, Alaska.

2. That at all the times mentioned in the objection filed herein by Mary M. Furnivall, and the said Delinquent Tax Roll of the City of Ketchikan, Alaska, and in the proceedings before its City Council in relation to the extension of the said Harris Street, upon which the claim of tax in said Delinquent Tax Roll is made by said City of Ketchikan, Alaska, against said property of this objector, the City of Ketchikan was an incorporated town or city, within the Territory of Alaska.

3. That on September 7, 1920, certain property owners and others, residents of Ketchikan, presented to the City Council of Ketchikan aforesaid, a petition in writing, asking for the construction of an extension of the said Harris Street at the expense of the property owners thereon, and the City of Ketchikan; that on October 5, 1920, certain property owners and others, residents of Ketchikan, presented to the City Council of Ketchikan, aforesaid, a petition in writing asking for the construction of an extension of the said Harris Street, at the expense of the property owners thereon, and the City of [103] Ketchikan; and that Mary M. Furnivall, objector herein, was not a party to either of said petitions, or any other document or agreement authorizing or creating a lien, or other-

wise permitting the creation of a lien upon her property.

4. That prior to the completion of the improvement of the Harris Street Extension, no action was taken by the City Council of the City of Ketchikan, Alaska, as provided by law, authorizing the improvement of such street or assessing the cost of such improvement against the property owners thereon or against the property abutting thereon; no notice was served upon this objector of any proposed improvement of such street; no finding that the owners of two-thirds in value of the property whose property abuts the improvement on said Harris Street Extension had petitioned the City Council of the City of Ketchikan therefor was ever made by said City Council; no ordinance or resolution to construct or improve said street and assess the abutting owners for two-thirds the cost thereof, or any other portion of such cost, was ever made or passed by said Council in connection with the improvement of said Harris Street Extension.

5. That the only action of record taken by the City Council of the City of Ketchikan in the matter of the improvement of Harris Street Extension as aforesaid, was the adoption at a regular meeting of said council on December 21, 1921, of an assessment against the property abutting on said improvement for the cost of the improvement thereon, and the later publication of an application to this Court for an order of sale of the property so assessed on which the tax had not been paid.

CONCLUSIONS OF LAW.

1. That the possessory right and title to lots 1 and 3 in block 3, Townsite Addition to the City of Ketchikan, Alaska, is in Mary M. Furnivall; that Mary M. Furnivall is the owner of lot 3 in block E, Schoenbar Addition to the City of [104] Ketchikan, Alaska.

2. That the action of the City Council of the City of Ketchikan, in levying on and assessing the above described property of Mary M. Furnivall for the improvement of the Harris Street Extension in the City of Ketchikan was and is irregular and illegal, without authority of law, and null and void.

3. Upon the evidence and the law in this cause, the objections of Mary M. Furnivall to the delinquent tax roll of the City of Ketchikan heretofore filed in this cause against property of which she has the possessory or legal title are sustained, and the order of sale of such property will be denied, and the objector is entitled to her costs of action by her in this behalf expended, to be taxed by the Clerk of this Court.

Dated at Juneau, Alaska, this fifth day of October, 1922.

THOMAS M. REED,

District Judge.

Thereafter, on November 13, 1922, the City of Ketchikan filed, with the Clerk of the Court at Ketchikan, its motion for an order to set aside the findings and decree, as follows:

In the District Court for the Territory of Alaska,
Division Number One, at Ketchikan.

No. 537—KA.

In the Matter of the DELINQUENT TAX ROLL
for the City of Ketchikan and the Applica-
tion for an Order of Sale Thereon.

Motion for Order to Set Aside Findings and Decree.

Comes now Will H. Winston, Attorney for the City of Ketchikan, and moves this Court for an order setting aside the findings of fact and conclusions of law and decree heretofore filed herein for the following reasons:

That the City of Ketchikan herein had no notice of the proposed findings and decree for the reason that a copy of said findings was mailed to one James M. Shoup, Esq., who had [105] formerly been retained in the above-entitled case, but who had been retained to assist only with the trial of the said cause and who had been paid for such services and was no longer retained by the City of Ketchikan and with whom the relationship of attorney and client did not exist as the same had ceased on June 21, 1922, at which time the said relationship was severed.

That the said Shoup did not notify the said City of Ketchikan or any of its employees or officers that he had received the said findings and decree and that the first knowledge that the City of Ketchikan or any of its employees had of such pro-

posed findings and decree was on the 25th day of October, 1922, when the same were discovered in the files in this case. That the reason that the said City of Ketchikan herein desires the findings and decree herein set aside is to enable the said City of Ketchikan to file proper exceptions thereto and that setting aside the said findings and decree cannot injure or prejudice the rights of the objectors herein, but can and does prevent the said City of Ketchikan from further proceedings herein. That attached hereto and made a part hereof is the affidavit of Will H. Winston.

WILL H. WINSTON,
Attorney for City of Ketchikan.

Affidavit of Will H. Winston.

United States of America,
Territory of Alaska,—ss.

Will H. Winston, being first duly sworn on oath, deposes and says that he is the attorney for the City of Ketchikan in the foregoing cause; that the City of Ketchikan retained one James M. Shoup, Esq., to assist him in the trial of the foregoing cause; that the said Shoup was paid off by the City of Ketchikan on the 21st day [106] of June, 1922, and he thereupon dropped out of the said case and was no longer an attorney therein; that on the 25th day of October, 1922, this affiant was searching the record herein and discovered the findings of fact and conclusions of law and decree signed and filed herein; that thereon this affiant called the said Shoup on the telephone and the said

Shoup advised this affiant that the only papers he had received was a copy of the memorandum opinion that this affiant had handed him; that thereupon this affiant informed the said Shoup that he had signed the original findings and decree and the said Shoup said that he did not know it; that thereupon this affiant went to the office of the said Shoup and the said Shoup again said that the only papers that he had received was the memorandum opinion that this affiant had given him; that thereupon the said Shoup discovered a letter that he had from Judge Wickersham, one of the attorneys herein, and this affiant told the said Shoup that the letter showed that he had received the said findings and decree and the said Shoup thereupon told this affiant that he did not know anything about it and thought that the papers were the same as this affiant had handed him, namely, the memorandum opinion.

That this affiant thereupon advised counsel for the City of Ketchikan in San Francisco and as a result, the foregoing motion is filed herein.

[Seal]

WILL H. WINSTON.

Subscribed and sworn to before me this 13th day of November, 1922.

MYRTLE D. MORRISSEY,

Deputy Clerk, U. S. District Court.

Filed in the District Court, District of Alaska, November 13, 1922. Jno. H. Dunn. By M. D. Morrissey, Deputy.

And thereupon the objectors, by their attorney James Wickersham, filed the following affidavits:

In the District Court for the Territory of Alaska,
Division No One, at Ketchikan. [110]

No. 537—KA.

MARY M. FURNIVALL,

Objector,

vs.

CITY OF KETCHIKAN, a Municipal Corporation,
Defendant.

United States of America,
Territory of Alaska,
City of Ketchikan,—ss.

Affidavit of James Wickersham.

James Wickersham, being first duly sworn, deposes and says:

That he is the attorney for the above-named objector in the matter of objection to the Delinquent Tax Roll of the City of Ketchikan; that this cause was tried in this Court at Ketchikan; that this cause was tried in this Court at Ketchikan, Alaska, on or about the third day of June, 1922, and was by the Court taken under advisement, and the Court rendered an opinion upon the law in respect thereto some time in July, 1922; that soon thereafter, and on the eighth day of August, 1922, this affiant prepared proposed findings of fact, conclusions of law and decree in the case, and on the eighth day of August, 1922, forwarded the original and a full complete copy thereof to J. M. Shoup,

Esquire, one of the attorneys for the City of Ketchikan in the said suit, directed to him by mail at Ketchikan, Alaska, and with the said proposed findings of fact, conclusions and decree forwarded a letter, of which the following is a true and correct copy:

Juneau, Alaska, August 8, 1922.

J. M. Shoup, Esq.,
Ketchikan, Alaska.

Dear Mr. Shoup:

We send you herewith originals and copies of findings of fact and conclusions of law and decrees in the Ketchikan Tax Roll cases of Mary M. Furnivall and J. M. Peterson [111] which we wish you would go over carefully and O. K. and return to us for filing.

The extra copies of these papers are, of course, for your own files.

Very sincerely,

WICKERSHAM & KEHOE.

By JAMES WICKERSHAM.

That affiant did not receive any answer to said letter, nor a return of the originals as requested in the letter of August 8, 1922, and, being in Ketchikan, Alaska, some time in September, 1922, called at the office of J. M. Shoup, Esq., in the Miners & Merchants Bank Building at Ketchikan, Alaska, and had a conversation with Mr. Shoup; that affiant inquired about the letter and findings aforesaid, and Mr. Shoup seemed uncertain about them, but opened one of the drawers in his desk

and found affiant's letter and the copies and spread them out on his desk before affiant. I asked him then and there to acknowledge service in writing upon the originals, which he did by writing fully upon the original proposed decree in each case an acknowledgment of service of a copy, to which he signed his name. Thereupon he delivered the originals to me and I took them back to Juneau with me, and at a later date, the date of their signature by Judge Reed, I presented them to Judge Reed with Mr. Shoup's acknowledgment of service thereon, and they were signed by the Judge and filed and entered of record in each of the causes.

I have read the affidavit of Will H. Winston, one of the attorneys in the said causes for the City of Ketchikan, and in answer thereto I say that I did not have any notice or information, or even a suspicion that Mr. Shoup was not, as he had theretofore been, an attorney for the City of Ketchikan in [112] the said causes. I have examined the papers in both of said causes and I do not find therein any withdrawal of Mr. Shoup's name as attorney in either case, and I had no notice thereof if there was ever any such withdrawal.

Affiant resides in Juneau, where affiant presented the said proposed findings, conclusions and decree to Judge Reed for signature, long after he had rendered his opinion in both of said causes at Juneau. The first intimation that affiant had that there was any question about Mr. Shoup's right to represent the City of Ketchikan in the said causes was when

Judge Reed exhibited to affiant a copy of a telegram, a night letter, dated November 13, 1922, addressed to Judge Reed, and signed by Will H. Winston, one of the attorneys for the City of Ketchikan, in which he then advised Judge Reed that Mr. Shoup had been paid by the City and was not the City's attorney.

That upon the signature of the District Judge to the findings of fact, conclusions of law and decree, on the day they bear date, the same were immediately filed with the Clerk of the District Court in and for the First Division of the Territory of Alaska, at Juneau, Alaska, and have ever since remained in the possession of the Clerk.

Affiant is informed and believes, and therefore states that the original letter written by affiant to Mr. Shoup, on August 8, 1922, together with the copies of the findings of fact, conclusions of law and decree in both of said causes were delivered by Mr. Shoup to Will H. Winston, and that Mr. Winston is now in possession thereof.

[Seal]

JAMES WICKERSHAM.

Subscribed and sworn to before me this 24th day of November, 1922.

J. A. CLARY,

Notary Public in and for Alaska.

My Commission expires February 14, 1926. [113]

Filed in the District Court, District of Alaska, First Division, November 24, 1922. John H. Dunn, Clerk. By W. B. King, Deputy.

In the District Court for the Territory of Alaska
Division No. One, at Ketchikan.

No. 537—KA.

In the Matter of the DELINQUENT TAX ROLL,
Ketchikan, Alaska.

MARY M. FURNIVALL,

Objector,

vs.

CITY OF KETCHIKAN.

**Exceptions to Findings of Fact and Conclusions of
Law.**

Comes now the City of Ketchikan, and at the time of filing the findings and conclusions herein, excepts to the findings of fact and conclusions of law this day made by the Court herein, as follows:

1. Said City of Ketchikan excepts to finding contained in paragraph No. 4 of the finding of fact herein "That prior to the completion of the improvement of the Harris street extension no action was taken by the City Council of the City of Ketchikan, Alaska, authorizing the improvement of such street or assessing the cost of such improvement against the property owners thereon or against the property abutting thereon." [117]

This exception is for the reason that no such objection is contained in the written objections on file herein or before the Court, and the Court had no power or jurisdiction to consider any objection not so stated in writing: And for the further reason

that there is no evidence to support said finding and same is against the law and the evidence therein.

2. Said City of Ketchikan excepts to finding contained in paragraph No. 4 of the findings of fact herein that "No finding that the owners of two-thirds in value of the property whose property abuts the improvement of said Harris street extension had petitioned the City Council of the City of Ketchikan, therefor, was ever made by the said City Council.

This exception is for the reason that no such objection is contained in the objections on file herein or before the Court, and that the Court had no power or jurisdiction to consider any objections not so stated in writing; and for the further reason that the law does not require any such finding to be made by said City Council; and for the further reason that there is no evidence to sustain such finding by the Court and the same is against the law and against the evidence herein.

3. Said City of Ketchikan excepts to the finding contained in said paragraph No. 4 of the findings of fact herein "That no ordinance or resolution to construct or improve said street and assess the abutting owners for two-thirds of the cost thereof, or any portion of such cost, was ever made by said Council in connection with the improvement of said Harris Street Extension."

This exception is for the reason that no such objection is contained in the objections on file herein or before the [118] Court, and the Court had no power or jurisdiction to consider any objection not

so stated in writing; and for the further reason that no such ordinance or resolution is required; and for the further reason that said finding is against the law and the evidence herein.

4. Said City of Ketchikan excepts to the finding contained in paragraph 5 of the findings of fact herein "That the only action of record taken by the City Council of the City of Ketchikan in the matter of the improvement of Harris Street Extension, as aforesaid, was the adoption at a regular meeting of said Council on December 21-, 1921, of an assessment against the property abutting on said improvement for the cost of the improvement thereon, and the later publication of an application to this Court for an order of sale of the property so assessed on which the tax has not been paid."

This exception is for the reason that no such objection is contained in the objections on file herein or before the Court and the Court had no power or jurisdiction to consider any objections not so stated in writing; and for the further reason that said finding is against the law and the evidence herein.

5. Said City of Ketchikan excepts to the conclusion of law contained in the second paragraph of conclusions of law herein, "That said action of said Council is irregular and illegal and without authority of law and null and void."

This exception is for the reason that said conclusion of law does not flow from the facts found, but that the only conclusions of law which does flow from said facts is the conclusion that none of the

objections stated in writing and so before the Court has been sustained. [119]

6. Said City of Ketchikan excepts to the conclusion of law contained in the third paragraph of conclusions of law herein, "That the order of sale should be denied and that the objector is entitled to her costs."

This exception is for the reason that the only conclusion of law flowing from the facts found is the conclusion that the objections made are not sustained and that the same should be dismissed, and that the City is entitled to its costs and to an order of sale, as prayed for.

Dated at Ketchikan, Alaska, November 25, 1922.

WILL H. WINSTON,

Attorney for the City of Ketchikan.

Filed in the District Court, District of Alaska, First Division, Nov. 25, 1922. John H. Dunn, Clerk. By W. B. King, Deputy.

Whereupon said City of Ketchikan requested the Court to make findings as follows:

In the United States District Court for Alaska.

No. 537—KA.

In the Matter of the DELINQUENT TAX ROLL
of Ketchikan, Alaska.

J. M. PETERSON,

Objector,

vs.

CITY OF KETCHIKAN.

**Findings and Conclusions and Decree Asked for by
City of Ketchikan.**

Comes now the City of Ketchikan and proposes the following findings of fact, conclusions of law and decree, and requests the Court to make and enter the same herein: [120]

FINDINGS AND CONCLUSIONS.

This cause came on regularly to be heard on the third day of June, 1922, on said delinquent tax roll, and the written objections thereto heretofore filed herein. The objector was represented by James Wickersham, Esq., and the City of Ketchikan by Will H. Winston, City Attorney, and by James M. Shoup, Esq. Evidence was heard, argument had and the matter duly submitted, and the Court having duly considered same, doth make the following

FINDINGS OF FACT.

1. The City of Ketchikan introduced its delinquent tax roll and its application for adjustment and order of sale, duly filed herein.
2. There was no evidence that the owners of two-thirds in value of the property abutting upon and affected by the proposed Harris street extension had not petitioned therefor.
3. There was no evidence in support of any of the other written objections filed herein, except the objection that the title to the property claimed by objector was in the United States Government.
4. I find that the title to said property was in the United States Government, but I also find that the

objector was in possession of same and claimed in his objections and in the evidence to be and was and is the possessory owner thereof.

As conclusion of law flowing from the facts found, I find.

1. That each of said written objections should be overruled.

2. That the City of Ketchikan is entitled to an Order of sale, as prayed for. [121]

DECREE.

WHEREFORE, it is ordered, adjudged and decreed that each and all of said objections be and the same is hereby overruled, and that an order of sale of the delinquent property as per said duplicate assessment-roll on file herein be issued as prayed for.

Filed in the District Court, District of Alaska, First Division, Nov. 25, 1922. ————— Clerk. By ————— Deputy.

In the United States District Court for Alaska.
No. 537—KA.

In the Matter of the DELINQUENT TAX ROLL
of Ketchikan, Alaska,
MARY M. FURNIVALL.

Objector,

vs.

CITY OF KETCHIKAN.

**Findings and Conclusions and Decree Asked for by
the City of Ketchikan.**

Comes now the City of Ketchikan and proposes the following findings of fact, conclusions of law and decree, and requests the Court to make and enter the same herein:

FINDINGS AND CONCLUSIONS.

This cause came on regularly to be heard on the third day of June, 1922, on said Delinquent Tax Roll, and the written objections thereto heretofore filed herein. The objector was represented by James Wickersham, Esq., and the City of Ketchikan, by Will H. Winston, City Attorney, and by James M. Shoup, Esq. Evidence was heard, argument had and the matter duly submitted; and the Court having duly considered same, doth make the following

FINDINGS OF FACT. [122]

1. The City of Ketchikan introduced its delinquent tax roll, and its application for adjustment and order of sale, duly filed herein.

2. There was no evidence that the owners of two-thirds in value of the property abutting upon and affected by the proposed Harris street extension had not petitioned therefor.

3. There was no evidence in support of any of the other written objections filed herein, except the objection that the title to the property claimed by objector was in the United States Government.

4. I find that the title to said property was in the United States Government, but I also find that

the objector was in possession of same and claimed in his objections and in the evidence to be and was and is the possessory owner thereof.

As conclusions of law flowing from the facts found, I find:

1. That each of said written objections should be overruled.

2. That the City of Ketchikan is entitled to an order of sale, as prayed for.

DECREE.

WHEREFORE, it is ordered, adjudged and decreed that each and all of said objections be and the same is hereby overruled, and that an order of sale of the delinquent property as per said duplicate assessment roll on file herein be issued as prayed for.

Filed in the District Court, District of Alaska, First Division, No. '25, 1922, ————— Clerk. By —————, Deputy.

But the Court refused to make any of said findings or conclusions to which refusal, in each instance, the said City of Ketchikan duly excepted.

Whereupon the Court entered its final decree herein,

Judge's Certificate.

I hereby certify that I am the judge by and before whom the above-entitled cause was tried and that the foregoing bill of exceptions is a full, true and correct account and transcript of the evidence and [123] proceedings had therein, and that it contains

the evidence and all the evidence heard or considered at said trial.

I also certify that the said bill of exceptions was duly presented and filed within the period allowed by the extension of time granted under the law and the rules of this Court.

Wherefore, said bill of exceptions being true and correct, I do now, within the time allowed by law and the rules of this Court, allow and settle same, and order it to be filed and to become a part of the records of this cause.

Dated at Ketchikan, Alaska, this 20th day of March, 1923.

THOS. M. REED,
District Judge.

In the District Court for the Territory of Alaska
Division Number One, at Ketchikan.

No. 537—KA.

In the Matter of the DELINQUENT TAX ROLL
for the City of Ketchikan.

Memorandum of Opinion.

On May 20, 1922, the delinquent assessment tax roll of the City of Ketchikan for the year 1921 was presented under the provisions of chapter 69 of the Session Laws of Alaska, 1913, for adjustment and order of sale of the property therein described. At the same time there were presented several delinquent special assessment-rolls for improvements made by the City under subdivision 4, Section

627, Compiled Laws of Alaska, 1913, and an application that an order of sale be entered of the property mentioned therein as abutting on the respective improvements.

No objections were made to the general delinquent tax roll of 1921, and an order of sale was directed to issue, as provided by the statute for the properties therein described on which the tax was delinquent; but objections were interposed to two of the special [124] assessments and the regularity of the whole proceeding leading up to the special assessment was vigorously assailed by counsel for the objectors.

The first of these special assessments to which objection was interposed is what is called the "Harris street extension" or "North Harris street" assessment, and the second is what is commonly known as the "Bawden street sewer assessment, and while the objections in each case are in most respects similar, yet the facts involved are so dissimilar that each assessment must receive a separate consideration.

HARRIS STREET EXTENSION ASSESSMENT.

The objections to the assessment for this improvement are presented by Mary M. Furnivall, claiming to be the owner of the right of purchase under the Townsite Act (26 Stat. L., 1095) of lots 1 and 3 of block 3 of the United States Government Addition to the Townsite of Ketchikan and lot 11, block E of the Schoenbar Addition to the City, and J. M. Peterson who claims to have the preference right

of purchase under the Townsite Act aforesaid to lot 2 of block 3 of the Townsite addition.

The objections presented include questions both of law and of fact and are in effect: That two-thirds of the abutting owners in value along the line of the improvement did not petition therefor as required by subdivision 4, section 627, Compiled Laws of Alaska; that no finding was made by the Common Council to the effect that two-thirds of the owners in value along the line of the proposed improvement had petitioned therefor; that no ordinance or resolution was adopted by the Common Council, providing for such improvement and assessment against the abutting owners; that the property in block 3 so assessed and owned or claimed by the objectors is the property of the United States, and therefore the land is not assessable; that the right of purchase claimed by objectors under the Townsite Act of the United [125] States is a personal right and not a right in the property, and is, therefore, not assessable; that the assessment is not levied on all the property abutting on the proposed improvement but only against property on the north side of the line of the improvement, nor was the assessment made according to benefits to or according to the value of the abutting property, nor was it made according to the front footage of the property abutting on the proposed improvement, but was an arbitrary assessment without regard to the value of the property or the front footage along the improvement and that at no time were the objectors af-

forded an opportunity to object to or protest against the improvement referred to or to the assessment.

The Harris Street Extension, so called, is a causeway largely built on pilong along the north bank of Ketchikan Creek and follows closely the meandering of that stream. The street at intervals extends over the stream bed, and some of the property on the north side of the extension has for a number of years been occupied as homes by residents of the City while that on the south side of the improvement is either in the stream bed or along a steep bluff, the side or bank of the creek.

It appears from the testimony that a number of years since the land through which the Harris street extension is established, was located as a mining claim and in the course of the improvement and operation of the mining property, one Schoenbar constructed a tramway along the north bank of Ketchikan Creek and practically along the line where the extension is now situated, for the purpose of transportation of ores and supplies to and from the mining property. This tram was used by the public as a means of travel and a number of people settled on the mining claim and built their homes on the north side of the tramway. In the course of time the tramway became out of repair and a number of the residents along the line thereof [126] petitioned the City Council of Ketchikan to improve the tramway by constructing a street from the intersection of Harris Street along the north side of Ketchikan Creek to the city limits of the mean width of twenty feet. This peti-

tion was filed with the City Council on January 15, 1919, but no action was taken thereon. On September 2, 1920, a second petition for improvement was filed with the City Council, praying that a temporary street be constructed and maintained for vehicle passage sixteen feet in width, with a four-foot sidewalk following the course of and upon the right of way of the Schoenbar tram. This petition was filed with the City Council, but no action was taken thereon. It appears that J. M. Peterson, one of the objectors signed this petition. On October 5, 1920, a third petition was filed, praying the City Council "to construct a sixteen-foot plank roadway and a four-foot sidewalk, and to lay out and establish a forty-foot right of way from present Harris street in front of the Parker House to and past the Harry Smith House, or to the city limits." The petitioners therein agreed to pay the City of Ketchikan their proportionate shares of two-thirds of the cost of the improvement and that such sums should be a lien on their respective properties. This petition was signed by eight persons—all, as appears from the testimony, residents along the north side of the proposed improvements. There were no petitioners residents or owners of property on the south side of the street. The objectors, Mary A. Furnivall and J. M. Peterson did not sign this petition. This petition was filed with, and approved by, the City Council on October 5, 1920.

There is no affirmative action appearing of record relative to the petition of October 5, 1920, although

some action must have been taken thereon, since the City Engineer made a survey of the proposed improvement about that time and a causeway or street was constructed in accordance with plans prepared and furnished by him.

Thereafter, the City Council, at its regular meeting on February [127] 2, 1921, adopted a resolution assessing the real property and possessory rights of certain named persons, according to their respective alleged front footage on the northern side of and along the line of said improvement for two-thirds of the cost thereof, and provided that such assessment should be a lien on the property, payable in ten days.

No assessment was made against the property abutting on the south side of the improvement.

J. M. Peterson was one of the persons named and J. W. Furnivall was also assessed—F. J. Furnivall being the husband of Mary M. Furnivall, the objector.

On February 2, 1921, a protest was filed against said assessment by the objectors J. M. Peterson, Mary M. Furnivall and others, alleging that all the abutting owners had not been assessed and that the petition under which the work was carried out had not the support of sufficient in interest. This protest, or remonstrance, was laid on the table on March 2, 1921.

It appears that in the year 1908, an application for patent from the United States was made before the United States Land Office for the mining claims over which the Schoenbar tram was con-

structed and a certificate for patent was issued for the Florida claim, being that part of the land over which the westerly part of the tram had been constructed; while the easterly, or upper part of the tram ran over another mining claim, which was not patented, and the land therein included reverted to the United States, free from any mining claim. Lot 11 of block E, assessed to Mary M. Furnivall, is a part of the Florida claim, while lots 1, 2 and 3 of block 3, assessed to Mary M. Furnivall and J. M. Peterson, are a part of the other claim reverting to the Government of the United States, and at the time the petition of October 5, 1920, was filed with the City Council, and at the times of the subsequent improvement and assessment no street had been laid out over this claim, nor was the property laid out into lots and blocks. [128] Whether Mary M. Furnivall was the owner of lot 11, block E of what appears now to be the Schoenbar Addition at this time does not appear from the testimony except that in 1918 she succeeded to the rights of F. J. Furnivall thereto. It appears from the testimony that on April 15, 1921, a part of the Florida Mining Claim was surveyed into lots and blocks, streets and alleys as the Schoenbar Addition to the City of Ketchikan and on the plat thereof is shown what is called "North Harris Street," a street from thirty to thirty-two feet in width and extending along the line of the old Schoenbar tram from the southerly side line to the easterly end line of the Florida Claim. Whether or not the streets or alleys set forth on the plat had been formerly dedi-

cated to the public is not shown by the testimony, but lot 11, block E, claimed by Mary M. Furnivall, is shown thereon as having a front footage of 37.39 feet on North Harris Street.

On May 31, 1921, The Government completed U. S. Survey No. 1381, which comprised part of the public domain formerly included in the abandoned mining claim hereinbefore referred to. This survey was made under the provisions of the Act of March 3, 1891, known as the Townsite Act (26 Stat. L, 1095) and the survey so made, laid out the property included therein into streets, alleys, lots and blocks and is known as the "Ketchikan Townsite Addition" Lots 1, 2 and 3 of block 3 are shown thereon,—lot 2 (claimed by Peterson) having a frontage of 34 feet, and lots 1 and 3 (claimed by Mary M. Furnivall) having a frontage of 42 feet and 92.68 feet respectively on the street therein designated as North Harris Street, being the same street known as the Harris Street Extension. It is shown by the evidence that the title to the three lots in this addition had not, at the time of the hearing before the Court, been conveyed by the townsite trustee to private owners; hence at the time of the hearing before the Court, no title to the lots in the Ketchikan [129] Townsite Addition was in Peterson or in Mary M. Furnivall, but was still in the United States, the claims of Peterson and Mrs. Furnivall being merely a preference right of purchase because of occupancy of the land.

On November 5, 1921, the Ketchikan Consolidated Mines Company executed a deed of right of way

for a public road over a portion of the Florida Mining Claim covering "a strip of ground beginning at the southerly end of Harris Street, so called, where it enters the Florida Mining Claim and continuing across said Florida Mining Claim, with a width bounded by the westerly side of said street, as platted by Joseph Ulmer, C. E., on the one side and the middle of Ketchikan Creek on the easterly side." By this deed, an easement for right of way following the line of North Harris Street of a varying width was conveyed to the City, but the fee still remained in the grantor.

Thereafter, on December 21, 1921, the City Council, at a regular meeting, adopted the following resolution assessing the property along the Harris Street Extension for the improvement thereof:

RESOLUTION.

Be it Resolved by the Common Council of the City of Ketchikan, Alaska; That, whereas a recheck has been made of assessment levied against the property owners fronting on Harris Street in said City and whereas such recheck has been made in accordance with established property lines fronting on said street.

It is hereby resolved by the Common Council that the resolution heretofore hereby made on the 2d day of February, 1921, be and the same is hereby repealed and set aside, said resolution levying assessments against the property owners and property abutting on Harris Street.

And it is hereby Resolved that the several sums set after the name of certain persons and the real

property owners, or occupied by them under possessory rights or otherwise, which property abuts on the Harris Street Extension in the City of Ketchikan, Alaska, be and the said sums are hereby assessed against said persons and said land owned or occupied by them as aforesaid, for two-thirds ($\frac{2}{3}$) of the expense of the construction of said street, the number of front feet of property abutting upon said improvement is hereinafter more fully set forth. [130]

F. J. Furnivall	92.58 ft. frontage	\$353.10
J. M. Peterson	34 do	129.50
F. J. Furnivall	42 do	160.00
F. J. Furnivall	37.79 do	144.00

Be it further Resolved, that the foregoing sums so assessed against said persons and said land abutting thereon as above set forth, be and the same are hereby made a specific lien upon said land; and such assessments shall become due and payable to the City Treasurer of the City of Ketchikan immediately upon the adoption and approval hereof and from and after January 1, 1922, the same shall bear interest at the rate of 8 per cent per annum and said interest shall be a lien on said property abutting on said improvement. And the collection of such assessments may be enforced by suit or collected in the same manner as other delinquent taxes.

And it is further resolved that all payments made on the former assessment roll shall be applied towards the payment of the above assessments.

Thereafter the City Council caused to be published a notice of application to the Court for an order of sale of the property so assessed, on which the tax had not been paid. Lot 11, block E, Schoenbar Addition and lots 1, 2 and 3, block 3, Townsite Addition assessed to J. M. Peterson and F. J. Furnivall, appear as part of this property.

From the testimony it appears that at the time of the filing of the petition on which the improvement was made, there was no street dedicated to the public use on which the improvement so proposed was to be constructed; that no ordinance or resolution was adopted by the City Council opening up a street or authorizing the improvement specified; that no finding was made by the City Council that two-thirds of the owners of property in value affected by or abutting on the proposed improvement had signed a petition therefor; that it further appears that two-thirds of the owners in value of property along the line of the proposed improvement did not petition therefor and that the objectors, Mary A. Furnivall and J. M. Peterson did not petition for the improvement. It further appears that when the assessment of December 3, 1921, was made, the title to the land in the Government townsite addition had not passed from the United States. [131]

Subdivision 4 of section 627 of the Compiled Laws of Alaska, provide that the Common Council of the City shall have power to provide for the location, construction and maintenance of the necessary streets, alleys, crossings, sidewalks and

sewers, and if such street, alley, sidewalk or sewer, or part thereof, is located or constructed upon the petition of the owners of two-thirds in value of the property abutting on and affected by such improvement, then two-thirds of the cost of the same may, in the discretion of the Council, be collected by the assessment and levy of a tax against abutting property and such tax shall be a lien on the same and may be collected as other real estate taxes are collected.

Section 628 provides that the Common Council may exercise their powers by ordinance or resolution, but no ordinance or resolution shall be valid unless adopted by a vote of four members of the council at a meeting where five are present.

Subdivision 14 of Section 627 provides that the Common Council may take such action by ordinance, resolution or otherwise as may be necessary to protect and preserve the lives, health, safety and well-doing of the people of the town and to publish all ordinances.

The statute authorizing the opening up and improvement of streets and assessing the cost thereof on abutting owners is general in its terms and gives a discretion to the City Council as to the assessment against abutting owners when a petition of two-thirds of the owners in value shall have been made therefor. This discretion, however, can be exercised only when two-thirds of the owners in value of the property abutting on or affected by the proposed improvement have petitioned therefor. This necessitates, therefore, a finding by the City Council

that the proper number of owners have petitioned for the improvement before an assessment can be made against the property of persons not binding themselves to pay their proportionate share [132] of the expense of the proposed improvement.

Had the City Council by ordinance based upon the petition provided for the improvement and specified therein that two-thirds of the cost would be assessed against the abutting owners, there would arise a strong presumption that the necessary number of petitioners had prayed therefor. Here nothing was intimated by the Council to the public or abutting owners not parties to the petition that their property would be assessed, and as far as their knowledge appears the City Council may have proposed to construct the street at public expense.

It being shown clearly that two-thirds of the property owners abutting on the proposed Harris Street Extension had not petitioned therefor, this is jurisdictional and, as to the nonconsenting owners, the whole proceedings are illegal.

The further question as to necessity of an ordinance, while not necessary to decision of objectives in the case, is, in my opinion, well taken.

The counsel for the City argue that under the subdivision 14 of Section 627 of the Compiled Laws above quoted, it is not necessary for the City Council to proceed by ordinance or resolution to construct or improve a street and assess the abutting owners for two-thirds of the cost thereof. I cannot agree with this position. Undoubtedly, many cases of repair or improvement may arise when it is not

necessary for the Council to adopt an ordinance or resolution providing therefor. These cases are where the rights of third parties or the public are not involved or cases where the work is not chargeable against property, or where property rights are not involved. In many cases, minor repairs may be necessary, or minor improvements made where an ordinance or resolution authorizing such repairs and improvements is not necessary. In such cases the repairs or improvements may be made without formal declaration by the Council. They may be provided for under the general [133] authorization conferring the power to act on the municipal executive officers. This method of procedure is provided for by the statute when it uses the word "otherwise"; but where an improvement is made of the character such as the opening of a street and assessing property owners for the cost thereof, there must be a formal resolution or ordinance—preferably the latter—as provided by section 628 of the Compiled Laws. This section provides that the Common Council may exercise their power by ordinance or resolution. The word "may" as used in the section while permissive in form, should be construed as mandatory where the rights of third parties or the public are involved.

In the case of *Supervisors vs. United States* (4 Wallace, 446), the Supreme Court says:

"The conclusion to be deduced from the authorities is that where power is given to public officers, whenever the public interest or private rights call for its exercise, the language used,

though permissive in form, is, in fact, peremptory.”

In *Atchison Board of Education vs. DeKay* (148 U. S. 591-98) the Court states that:

“* * * the general rule is that where the charter commits the decision of a matter to the council and is silent as to the mode, the decision may be evidenced by a resolution and not necessarily by an ordinance.”

When power to make improvements is conferred in general terms, the municipality may exercise the same only by formal legislative action on the part of the city council. (28 Cyc. 992.)

The fourth subdivision of section 627 authorizes the city in general terms to provide for the construction of streets and improvements on assessment of two-thirds of the cost thereof when petitioned for by a certain ownership of the property affected thereby and abutting thereon. Therefore legislative action must be taken by the City Council to determine the necessity of the improvement and a finding made by the City Council that the necessary number of property owners have petitioned therefor. This can only be done by ordinance [134] or resolution.

17 Amer. & Eng. Ency. of Law, p. 236, note 2.

Eckert vs. Town of Walnut, 91 N. W. 929.

There is no showing that an ordinance or resolution was passed by the City Council, either by the minutes of the Council or by the oral testimony submitted at the hearing.

A discretion is given the City Council to determine whether the cost of a public improvement shall be borne wholly by the city at large or two-thirds thereof by the abutting property. At the time the improvement is decided upon by the Council, it should also determine how the cost thereof should be borne. If this is not done, the whole proceeding would be left to the decision of a city council after the work is finished without the opportunity to the property owners to protest or object.

As is said in *Eckert vs. Town of Walnut*, *supra*:

“If no ordinance or resolution were required in such cases (altering and establishing grades of streets), the owner of such property would be practically at the mercy of the ever-changing personnel of the city or town government, and his property rights and values might be shifted at their own sweet will because of his inability to show their unrecorded vagaries.”

The case at bar shows the necessity of an ordinance. No notice of the manner of the proposed improvement was given the objecting property owners; no opportunity to protest or object before the improvement was contracted for; an assessment was levied by a subsequent council without prior notice or any equalization or opportunity for the owners of the property to be heard. The proceedings were irregular and cannot be sustained.

It further appears that the assessment as to lots 1, 2 and 3 of block 3, Townsite Addition, is against the possessory [135] right of F. J. Furnivall and J. M. Peterson. The former disclaims any

possessory right to lots 1 and 3 and testimony shows the title, if in anyone is in Mary M. Furnivall.

Statute 627, Compiled Laws, provides that the assessment shall be a lien on the property abutting on the improvement. The lien provided for in the statute is not against the owner or his right of possession of the property, which is personal, but against the property itself. The legal title to this property lies in the United States and cannot be assessed.

For the reasons stated the objections of Mary M. Furnivall and J. M. Peterson will be sustained and the order of sale of lot 3, block E, Schoenbar Addition, and lots 1, 2 and 3, Townsite Addition, will be denied.

The Bawden Street Sewer
(Omitted herein).

Let findings and order issue in accordance herewith.

THOS. M. REED,
District Judge.

July 27, 1922. [136]

In the District Court for the Territory of Alaska,
Division No. One at Ketchikan.

No. 537—K. A.

In re Delinquent Tax Roll MARY M. FURNI-
VALL,

Objector,

vs.

CITY OF KETCHIKAN, a Municipal Corpora-
tion.

Assignment of Errors.

Comes now the City of Ketchikan, Alaska, and at the time of filing its Petition for Allowance of Appeal herein files and presents this, its Assignment of Errors upon which it will rely in the United States Circuit Court of Appeals for the 9th Circuit from the final judgment and decree of this Court made and entered in the above-entitled cause on the 5th day of October, 1922.

I.

The Court erred in denying the motion for a non-suit made by said The City of Ketchikan at the conclusion of the evidence for and in behalf of the objectors herein.

II.

The Court erred in holding at the conclusion of the evidence herein, that evidence had been introduced herein sufficient in law to sustain the objections made by the above-named objector, or any of said objections.

III.

The Court erred in holding that evidence had been introduced herein sufficient in law to justify it in refusing to make and enter its order for the sale of the property mentioned in the objections filed herein for nonpayment of street grade assessments, in accordance with the application of the City of Ketchikan herein made. [150]

IV.

The Court erred in refusing to make and enter its order for the sale of the property mentioned in the objections filed herein, for nonpayment of the street improvement assessments in accordance with the application of the City of Ketchikan herein.

V.

The Court erred in holding that the delinquent tax assessment herein claimed by the City of Ketchikan was void and of no effect. The Court erred in sustaining by its decree herein the objections, and erred in sustaining any of the objections of said Mary M. Furnivall to the assessment of the costs of the improvement of the Harris Street extension against Lots 1 and 3 in Block 3; and

The Court erred in its decree herein denying the order of sale of said lots as requested by said City of Ketchikan.

The Court erred in its decree herein in holding that said objector should recover his costs and disbursements against said City of Ketchikan.

VI.

The Court erred in its decree herein in holding that the objections made or filed herein stated any

valid or sufficient reason why the City of Ketchikan should not have an order of sale of said lots for non-payment of street improvement assessments, as requested by it herein.

VII.

The Court erred in its decree herein in holding that the objection filed herein stated any valid or sufficient grounds why the objector was entitled to the relief asked for by him or to any part thereof, or to the relief granted in the judgment and decree of this Court, or to any part of said relief. [151]

VIII.

(a) The Court erred in holding (as it held in Finding No. IV), "That prior to the completion of the improvement of the Harris Street extension, no action was taken by the City Council of the City of Ketchikan, Alaska, authorizing the improvement of such street or assessing the cost of such improvement against the property owners thereon or against the property abutting thereon."

(b) The Court erred in holding (as it held in Finding No. IV), that "No finding that the owners of two thirds in value of the property whose property abuts the improvement of said Harris Street extension had petitioned the City Council of the City of Ketchikan therefor, was ever made by said City Council."

(c) The Court erred in holding (as it held in Finding No. IV), that "No ordinance of resolution to construct or improve said street and assess the abutting owners for two-thirds of the cost thereof, or any portion of such cost, was ever made by said

Council in connection with the improvement of said Harris Street extension.

IX.

The Court erred in holding (as it held in Conclusion of Law No. 2), "That said action of Council is irregular and illegal and without authority of law, and null and void."

X.

The Court erred in holding (as it held in Conclusion of Law No. 3), "That the order of sale should be denied and that the objector is entitled to her costs."

XI.

The Court erred in its decree denying the order of sale and giving judgment for costs, and in every part of said decree.

WILL H. WINSTON,

Attorney for City of Ketchikan.

Filed in the District Court, Territory of Alaska,
First Division, Jun. 12, 1923. John H. Dunn,
Clerk. By _____, Deputy, [152]

In the District Court for the Territory of Alaska,
Division No. One at Ketchikan.

No. 537—K. A.

In Re Delinquent Tax Roll MARY M. FURNI-
VALL,

Objector,

vs.

CITY OF KETCHIKAN, a Municipal Corpora-
tion.

**Petition for Allowance of Appeal, and Order
Allowing Appeal.**

The City of Ketchikan, considering itself aggrieved by that certain decree and judgment of the above-entitled court made and entered herein on the fifth day of October, 1922, wherein and where by it was ordered, adjudged and decreed that objections of said Mary M. Furnivall to the assessment against her and against Lots 11, Block E. S. Addn., and Lots 1 and 3 S. Addn., of the costs of the improvement of Harris Street extension be sustained, and wherein the petition of said City of Ketchikan for an order for the sale of said property was denied, and costs and disbursements were adjudged against City of Ketchikan, *does hereby appeal* from said judgment and decree, and from the whole thereof, to the United States Circuit Court of Appeals of the 9th Circuit, for the reasons specified in the Assignment of Errors filed herein and herewith; and said City of Ketchikan prays that this appeal may be allowed, and that a transcript of the record, papers and all proceedings upon which said judgment and decree was made, duly authenticated, may be forwarded to said Circuit Court of Appeals for the 9th Circuit as by law provided; and it further prays that this Court will fix the amount of cost bond on appeal.

WILL H. WINSTON,
Attorney for Appellant.

Filed in the District Court, Territory of Alaska, First Division, Jun. 12, 1923. John H. Dunn, Clerk. By _____, Deputy. [153]

The foregoing petition for allowance of appeal is hereby granted, and the amount of Cost Bond on Appeal is hereby fixed at \$250.00

Done in open court. Dated at Ketchikan this 12th day of June, 1923.

THOS. M. REED,
Judge.

Filed in the District Court, Territory of Alaska, First Division, Jun. 12, 1923. By John H. Dunn, Clerk, By _____, Deputy. [154]

In the District Court for the Territory of Alaska,
Division No. One at Ketchikan.

No. 537—K. A.

In re Delinquent Tax Roll, MARY M. FURNIVALL,

Objector,

vs.

CITY OF KETCHIKAN, a Municipal Corporation.

Cost Bond on Appeal.

KNOW ALL MEN BY THESE PRESENTS:
That we, City of Ketchikan, Alaska, a municipal corporation, as principal, and Thomas Torry, as surety, are held and firmly bound unto Mary M. Furnivall, above-named objector, her heirs and as-

signs, in the sum of Two Hundred and Fifty Dollars, for which payment well and truly to be made we and each of us bind ourselves, our and each of our successors, heirs and assigns firmly by these presents:

Signed and sealed this 12th day of June, 1923.

The condition of the foregoing obligation is such that whereas in the above-entitled court and cause said Mary M. Furnivall did on the 5th day of October, 1922, recover a decree against said City of Ketchikan sustaining objections made by her to the issuance of an order for the sale for delinquent street assessments on certain property in the City of Ketchikan, and a judgment for costs; and Whereas said City of Ketchikan has appealed from said decree and judgment;

NOW, THEREFORE, if said City of Ketchikan shall prosecute its said appeal to effect and shall pay all costs that may be adjudged against it if it fail to make good its plea and appeal, then this obligation shall be null and void; otherwise it shall [155] remain in full force and effect.

CITY OF KETCHIKAN,

By THOMAS TORRY,

Mayor, Principal.

By THOMAS TORRY,

Surety.

Territory of Alaska,

City of Ketchikan,—ss.

Thomas Torry, whose name is subscribed to the foregoing undertaking as surety, being first duly sworn on oath deposes and says: That he is a resi-

dent of the Territory of Alaska and over the age of 21 years; that he is not an attorney or counsellor, clerk, marshal or other officer of any court; that he is worth the sum of \$500.00 over and above all his just debts and liabilities, and exclusive of property exempt from execution.

THOMAS TORRY,

Subscribed and sworn to before me this 12th day of June, 1923.

(Seal)

WILL H. WINSTON,

Notary Public for Alaska.

My Commission expires June 16, 1925.

Approved as to form and sufficiency this 12th day of June, 1923.

THOS. M. REED,

Judge.

Filed in the District Court, Territory of Alaska, First Division, Jun. 12, 1923. John H. Dunn, Clerk. By _____, Deputy. [156]

In the District Court for the Territory of Alaska,
Division No. One at Ketchikan.

No. 537—K. A.

In Re Delinquent Tax Roll MARY A. FURNI-
VALL,

Objector,

vs.

CITY OF KETCHIKAN, a Municipal Corporation.

Citation on Appeal.

United States of America,
Territory of Alaska,—ss.

The President of the United States of America to
above-named Mary M. Furnivall, objector:

You are hereby cited and admonished to be and appear at the United States Circuit Court of Appeals for the 9th Circuit at San Francisco, California, within thirty days from the date hereof, pursuant to an order allowing an appeal from the final decree and judgment made and entered by the above-entitled court in the above-entitled cause; to show cause, if any there be, why the said decree and judgment sustaining the objections of said Mary M. Furnivall to the petition of said City of Ketchikan for an order of sale for non-payment of delinquent street assessments of lots 11, Block E, and lots 1, 3, S. Addn., and denying said petition of said City for the sale of said lots, and adjudging costs against said City, should not be set aside, corrected and reversed, and why speedy justice should not be done in the premises.

Witness Honorable William Howard Taft, Chief Justice of The Supreme Court of the United States this 12th day of June, 1923.

THOS. M. REED,

District Judge.

OFFICE OF U. S. MARSHAL,

Juneau, Alaska.

Received July 5, 1923. Docket No. 5240. For service by Deputy Pryde.

Due service of a copy of the within and foregoing Citation on Appeal admitted this — day of —, 1923.

_____,
Attorney for Mary M. Furnivall, Objector.

Filed in the District Court, Territory of Alaska,
First Division. June 12, 1923. John H. Dunn,
Clerk. By —, Deputy.

United States of America,
District of Alaska,
Division No. One,—ss.

I hereby certify that I received the within Citation on the 5th day of July, 1923, at Juneau, Alaska, and that I served the same on the 5th day of July, 1923, at Juneau, on Judge James Wickersham as Attorney for Mary M. Furnivall, Objector, by showing the original and handing to the said Judge James Wickersham a certified copy of the within Citation, certified to by Geo. D. Beaumont, U. S. Marshal.

Dated at Juneau, Alaska, this 5th day of July, 1923.

Personally and in person,

GEO. D. BEAUMONT,
U. S. Marshal.

By HARRY V. PRYDE,
Office Deputy,

Marshal's fee \$3.00 [158]

In the District Court for the Territory of Alaska,
Division No. One at etchikan.

No. 537—K. A.

In Re Delinquent Tax Roll MARY A. FURNI-
VALL,

Objector,

vs.

CITY OF KETCHIKAN, a Municipal Corporation.

Praeceptum for Transcript of Record.

To the Clerk of the above-entitled court:

You will please prepare and have in the U. S. Circuit Court of Appeals at San Francisco within the time required by the rules and orders of court, the record on appeal in the above-entitled matter. Let said record consist of the following enumerated papers and documents, viz.:

Copy of Objection of Mary M. Furnivall, objector, filed herein May 20, 1922, with the exhibits thereto attached;

Copy of Demurrer filed June 3, 1922;

Copy of Motion to strike filed by Mary M. Furnivall;

Copy of Judgment and Decree in favor of Mary M. Furnivall;

Copy of Motion to strike filed by Mary M. Furnivall Nov. 27, 1922;

Copy of Order on Motion to strike, filed Dec. 5, 1922;

Copy of Order re Bill of Exceptions filed Dec. 5, 1922;

Copy of Bill of Exceptions;
Copy of Memorandum Opinion—omitting that part of said opinion following the heading therein, “Bawden Street Sewer”;
Copy of Assignment of Errors;
Copy of Petition for Appeal, with allowance of Appeal;
Copy of Bond and approval;
Copy of this praecipe.
Original Citation, with acceptance of service thereon.

Dated this 12th day of June, 1923.

WILL H. WINSTON,
Attorney for City of Ketchikan.

Filed in the District Court, Territory of Alaska, First Division. June 12, 1923. John H. Dunn, Clerk. By ———, Deputy. [159]

In the District Court for the District of Alaska,
Division Number One at Juneau.

No. 537—K. A.

In Re Delinquent Tax Roll MARY A. FURNI-
VALL,

Objector,

vs.

THE CITY OF KETCHIKAN, a Municipal Cor-
poration.

Supplemental Praecept.

To the Clerk of the District Court, at Juneau.

Sir:

You will please prepare and forward to the U. S. Circuit Court of Appeals at San Francisco, Calif., in accordance with the rules, the following papers supplemental to those named in the Praecept heretofore filed herein on June 12, 1923, to wit:

1. This supplemental praecipe.
2. Original Order Enlarging Time.
3. Order, dated July 14, 1923, directing transportation original exhibits, i. e., Plaintiff's A and Defendant's 1.
4. Original exhibits: Plaintiff's A and Defendant's 1.

Dated July 14, 1923.

Respectfully,

R. E. ROBERTSON,

Of Counsel for the City of Ketchikan, a municipal corporation.

Filed in the District Court, Territory of Alaska, First Division. July 14, 1923. John H. Dunn, Clerk. By M. B. King, Deputy. [160]

In the District Court for the District of Alaska,
Division Number One at Juneau.

No. 537—K. A.

In Re Delinquent Tax Roll MARY A. FURNI-
VALL,

Objector,

vs.

THE CITY OF KETCHIKAN, a Municipal Cor-
poration.

Order Enlarging Time.

Now on this day this matter coming on for hearing on the petition of the City of Ketchikan, the above-named municipal corporation, for an enlargement of 30 days' time within which to file the appeal record herein and to docket the case with the Clerk of the United States Circuit Court of Appeals, for the Ninth Circuit, at San Francisco, Calif., and good cause being shown therefor:

Now, therefore, I, the judge who heretofore signed the citation herein, do enlarge the time, and it is hereby ordered that the time be enlarged, for a period of 30 days from the date hereof in which the said City of Ketchikan, the above-named municipal corporation, shall file the appeal record herein and docket the case with the Clerk of the United States Circuit Court of Appeals for the Ninth Circuit at San Francisco, Cal.

Done in open court this 9th day of July, 1923.

THOS. M. REED,

Judge.

Entered Court Journal No. S, Page 202.

Filed in the District Court, Territory of Alaska,
First Division. July 9, 1923. John H. Dunn,
Clerk. By M. B. King, Deputy. [161]

In the District Court for the District of Alaska,
Division Number One at Juneau.

No. 537—K. A.

In Re Delinquent Tax Roll MARY A. FURNI-
VALL,

•Objector,

vs.

THE CITY OF KETCHIKAN, a Municipal Cor-
poration.

Order Re Original Exhibits.

Now on this day, it appearing proper to me, the
presiding Judge of the above-entitled District Court,
that these certain original exhibits, i. e.: Plaintiff's
(Objector's) Exhibit A and Defendant's (The City
of Ketchikan's) Exhibit 1, should be inspected by
the Honorable United States Circuit Court of Ap-
peals for the Ninth Circuit upon the appeal herein:

Now, therefore, it is hereby ordered that the
Clerk of this Court transport to the Clerk of
the United States Circuit Court of Appeals
for the Ninth Circuit of San Francisco, Calif., those
two certain original papers or maps which are
Plaintiff's (Objector's) Exhibit A and Defendant's
(The City of Ketchikan's) Exhibit 1, respectively,

so that the same may be inspected by said Circuit Court of Appeals upon the appeal herein.

Done in open Court this 14th day of July, 1923.

THOS. M. REED,

Judge.

Entered Court Journal No. S, Page 209. [162]

Filed in the District Court, Territory of Alaska, First Division. July 14, 1923. John H. Dunn, Clerk. M. B. King, Deputy.

In the District Court for the District of Alaska,
Division Number One, at Juneau.

United States of America,
District of Alaska,
Division No. 1,—ss.

Certificate of Clerk U. S. District Court to Transcript of Record.

I, JOHN H. DUNN, Clerk of the District Court for the District of Alaska, Division No. 1, hereby certify that the foregoing and hereto attached 162 pages of typewritten matter, numbered from 1 to 162, both inclusive, constitute a full, true, and complete copy, and the whole thereof, of the record, as per the praecipe and supplemental praecipe of Appellant on file herein and made a part hereof, in the cause wherein the CITY OF KETCHIKAN, a Municipal Corporation, is Appellant, and MARY M. FURNIVALL, is Appellee, No. 537—K. A., as the same appears of record and on file in my office, and that said record is by virtue of a petition for Ap-

peal and Citation issued in this cause and the return thereof in accordance therewith.

I do further certify that this transcript was prepared by me in my office, and that the cost of preparation, examination and certificate, amounting to Seventy-six and 50/100 Dollars (\$76.50) has been paid to me by counsel for Appellant.

IN WITNESS WHEREOF I have hereunto set my hand and the seal of the above-entitled Court this 16th day of July, 1923.

JOHN H. DUNN,
Clerk.

In the United States Circuit Court of Appeals
for the Ninth Circuit.

No. 4061.

CITY OF KETCHIKAN,

Appellant,

vs.

MARY M. FURNIVALL,

Appellee.

Designation Re Printing Record. Rule 23.

To the Clerk of Above-entitled Court:

You will please NOT have printed the following portions of the record sent you in above-entitled cause as the same are duplications of other portions of said record, to wit:

Copy of objections of Mary M. Furnivall, on pages
28 to 39, inclusive.

Copy of demurrer, filed 6/3/22, on pages 44 to 45.

Copy of answer to objections of Mary M. Furnivall, on pages 42-43-44.

Copy of judgment and decree as to Mary M. Furnivall, on pages 46-47.

Copy of motion to strike filed by Mary M. Furnivall, on pages 48-49.

Copy of order on motion to strike of Mary M. Furnivall, on pages 49-50.

Copy of order re bill of exceptions as to Mary M. Furnivall, on pages 50-51.

Copy of opinion of Judge Reed, on pages 137 to 149, inclusive.

AND please NOT have printed the following portions of said record as the same are not embraced in any praecipe filed with the lower court, to wit:

Objections of J. M. Peterson on pp. 39-40-41-42.

Answer to objections of J. M. Peterson on pp. 42-43.

Judgment and decree as to J. M. Peterson on pp. 45-46.

Order to strike as to J. M. Peterson on pp. 47-48.

ALSO *place* NOT have printed the following portions of the bill of exceptions in said record, as said portions relate alone to J. M. Peterson who is not a party to this appeal, to wit:

Pages 99 to bottom of page 102,

Pages 108 to 110,

Pages 114 to 117.

ALSO in the printing of the printed assessment-rolls please omit all that part between "YEAR 1918" and "DELINQUENT IMPROVEMENT

ASSESSMENTS"—Omitting "YEAR 1918" but NOT omitting "DELINQUENT IMPROVEMENT ASSESSMENTS."

Said portions so directed NOT to be printed are NOT material for consideration of any of the errors assigned.

ROBERT W. JENNINGS,
R. E. ROBERTSON,
Attorneys for Appellant.

Copy received this 6th day of August, 1923.

Attorney for Appellee.

United States of America,
Territory of Alaska,—ss.

R. E. Robertson, being first duly sworn on oath, deposes and says: that he is a citizen of the United States, over the age of 21 years, and a resident of Juneau, Alaska; that on August 7, 1923, he duly served upon Judge James Wickersham and Messrs. Wickersham & Kehoe the within designation re printing record by then and there personally handing and delivering to Mr. Joseph W. Kehoe a true and correct copy thereof in the city of Juneau, Alaska, at the law offices of said Judge James Wickersham and Messrs. Wickersham & Kehoe; that the said Kehoe is a law partner of said James Wickersham and is one of the members of the law firm of Wickersham & Kehoe of which the other member is the said Judge James Wickersham; that affiant served said designation re printing record as aforesaid and so handed and delivered it to said Kehoe instead of handing and delivering

it to said Wickersham because said Wickersham was then and there absent from said city of Juneau, Alaska, and in or in the vicinity of Hyder, Alaska, on a business trip the exact duration of which is unknown to affiant.

R. E. ROBERTSON.

Subscribed and sworn to before me this 8th day of August, 1923.

[Seal]

SIMON HELLENTHAL,

Notary Public for Alaska.

My Commission expires Jan. 12, 1926.

[Endorsed]: No. 4061. In the United States Circuit Court of Appeals for the Ninth Circuit. City of Ketchikan, Appellant, vs. Mary M. Furnivall, Appellee. Designation of Appellant Under Rule 23. Filed Aug. 15, 1923. F. D. Monckton, Clerk. By Paul P. O'Brien, Deputy Clerk.

In the United States Circuit Court of Appeals for
the Ninth Circuit.

No. 4061.

CITY OF KETCHIKAN,

Appellant,

vs.

MARY M. FURNIVALL,

Appellee.

Affidavit as to Amount in Controversy.

United States of America,
District of Alaska,—ss.

I, Thomas Torry, being first duly sworn on oath depose and say:

I am the Mayor 6 of the city of Ketchikan, Alaska. I have resided in said city for the past twenty years, and am familiar with real estate values in said city having frequently bought and sold lots and blocks therein and being conversant with sales by others.

I am familiar with and qualified to give an opinion as to the reasonable worth and value of the lots involved in this cause, to wit: Lot 11, Block E. S. Addition and Lots 1 and 3, Block E. S. Addition to the said city of Ketchikan. Said lots are at a reasonable estimate worth more than the sum of Five Hundred Dollars; and the value to the City of Ketchikan of an order of sale of said lots as prayed for herein is more than Five Hundred Dollars.

THOMAS TORRY.

Subscribed and sworn to before me this 3d day of August, 1923.

[Seal]

J. E. JOHNSON,

Notary Public for Alaska.

My commission expires May 29, 1927.

Service accepted this 6th day of August, 1923.

Attorney for Appellee.

(Affidavit of Service.)

United States of America,
Territory of Alaska,—ss.

R. E. Robertson, being first duly sworn on oath, deposes and says: that he is a citizen of the United States, over the age of 21 years, and a resident of Juneau, Alaska; that on August 7, 1923, he duly served upon Judge James Wickersham and Messrs. Wickersham & Kehoe the within affidavit as to amount in controversy by then and there personally handing and delivering to Mr. Joseph W. Kehoe a true and correct copy thereof in the city of Juneau, Alaska, at the law offices of said Judge James Wickersham and Messrs. Wickersham & Kehoe; that the said Kehoe is a law partner of said James Wickersham and is one of the members of the law firm of Wickersham & Kehoe of which the other member is the said Judge James Wickersham; that affiant served said affidavit as to amount in controversy as aforesaid and so handed and delivered it to said Kehoe instead of handing and delivering it to said Wickersham because said Wickersham was then and there absent from said city of Juneau, Alaska, and in or in the vicinity of Hyder, Alaska, on a business trip the exact duration of which is unknown to affiant.

R. E. ROBERTSON,

Subscribed and sworn to before me this 8th day of August, 1923.

[Seal]

SIMON HELLENTHAL,

Notary Public for Alaska.

My commission expires Jan. 12, 1926.

[Endorsed]: No. 4061. In the United States Circuit Court of Appeals for the Ninth Circuit. City of Ketchikan, Appellant, vs. Mary M. Furnivall, Appellee. Affidavit as to Amount in Controversy. Filed Aug. 15, 1923. F. D. Monckton, Clerk. By Paul P. O'Brien, Deputy Clerk.

[Endorsed]: No. 4061. United States Circuit Court of Appeals for the Ninth Circuit. City of Ketchikan, a Municipal Corporation, Appellant, vs. Mary M. Furnivall, Appellee. Transcript of Record. Upon Appeal from the United States District Court for the District of Alaska, Division No. 1.

Filed July 26, 1923.

F. D. MONCKTON,

Clerk of the United States Circuit Court of Appeals for the Ninth Circuit.

By Paul P. O'Brien,

Deputy Clerk.

